

**Access to Microfinance & Improved Implementation of Policy Reform
(AMIR Program)**

Funded By U.S. Agency for International Development

WOMEN IN BUSINESS CONSTRAINTS

Report on Women, Work and Legal Constraints

Final Report

**Deliverable for BAI Component, Task No. 2.6.1
Contract No. 278-C-00-98-00029-00**

November, 1999

This report was prepared by Dr. Amira El-Azhary Sonbol, Associate Professor , School of Foreign Service, Georgetown, Consultant, for Chemonics International Inc., prime contractor to the U.S. Agency for International Development for the AMIR Program in Jordan.

TABLE OF CONTENTS

Glossary of terms

Executive summary

Part I: THE PROJECT

- A. Challenges outlined for the consultancy
- B. Scope of the Research
- C. Sources and Method of Research
- D. Persons I met with of importance to this report
- E. Plan of Work and Limits of the research

Part II: INTRODUCTION

- Why Jordan?
- Sources of Jordan's laws
 - 1. Islamic Law (*Shari`a*)
 - 2. Ottoman Codes, the Mejella and Family Codes
 - 3. European codes
 - 4. Tribal law (*qada' `asha'iri*)
 - 5. `urf or traditional law
 - 6. International laws
- Conclusions and Suggestions

Part III: Labor Law

- Women's participation in the economy.
- Hindrances Facing Women in Labor Laws
 - Philosophical basis of Jordanian labour laws
 - Guarantees of Equal Rights in Constitution and labor laws
 - Legal Benefits that Constitute Constraints
 - A. Night work
 - B. Social Security
 - C. Retirement
 - i. Privileges extended to women in retirement laws
 - ii. Overtly Discriminatory laws
 - iii. Forced Retirement
 - iv. Polygamy and Pension
 - D. Missing laws

Part IV: PERSONAL STATUS LAW

- Positive Gains for Jordanian women

- *Shari`a* Courts in Contemporary Jordan
- Personal Status Laws as Hindrance to Women and Work

- A. Marriage and Family
- B. *Wilaya* (guardianship)
- C. Right to Work
- D. Nafaqa and Obedience (Ta`a)
- E. Divorce

Part V: OTHER LEGAL CONSTRAINTS

- 1. Nationality
- 2. Taxation Law

Part VI: IMPLICATIONS AND OBSERVATIONS

- Regarding a husband's veto right on his wife's work
- *Shiqas wa niza'*, court procedures and judge's logic
- Contradictions regarding *Maslaha* and *Shiqaq* and *Niza'*
- Procedural Problems
- Regarding the Prerogatives of the Qadi
- Regarding the codes applied in court

Part VII: SUGGESTIONS

- 1. Social Security and Retirement
- 2. Social Security and Polygamy
- 3. Labor Law
- 4. Criminal Law
- 5. Court procedures and judges
- 6. Changing Personal Status Law
- 7. Age of Marriage
- 8. Advocacy
- 9. Information campaign about labor laws and personal status laws
- 10. Cultural programs (*taw`iyya*)
- 11. Education
- 12. Gender in the Classroom and Media

VIII. "Business and Professional Women's Club"

Bibliography

Glossaries

Glossary of Terms

<i>ahliyya qanuniyya, ahliyya kamila</i>	legal competency
<i>`amal</i>	work
<i>`amil</i>	worker/laborer/employee
<i>ansab</i>	progeny, descendants
<i>`asha'i</i>	tribes, clans <i>`asha'ir</i>
<i>awqaf</i>	religious endowments
<i>bayt al-ta'a</i>	house of obedience: a house the husband prepares which the court would consider a "legal", meaning adequate, home where the wife is obliged to go live with him. Until 1985 the police dragged the woman against her will to live there with her husband in Egypt.
<i>dar al-ajwad</i>	A place in a town where husbands, fathers or brothers incarcerated disobedient women (wives, daughters or sisters) until they relented and did what they were told
<i>diyya</i>	blood-price
<i>faskh</i>	annulment
<i>Fatawi</i>	juridical opinions
<i>Fiqh</i>	Islamic theology or Jurisprudence
<i>Fuqaha</i>	Islamic theologian
<i>hudud</i>	Crimes with clearly defined punishments in Islamic law
<i>`ida`</i>	Period of three months following divorce in which a wife is supported by her husband and during which she cannot marry another. This "waiting period" is meant to allow the couple to reconcile and to

assure that the wife is not pregnant. There is no such waiting period for the men who can marry immediately after.

<i>ihtibas</i>	a wife keeping herself solely for her husband; today interpreted as <i>habs</i> or locking up
<i>ijab wa qubul</i>	exchange of vows in a marriage
<i>`isma</i>	marriage knot, power to divorce
<i>Jahiliyya</i>	pre-Islamic period considered a period of ignorance
<i>kafa'a</i>	social parity, term used to show that a bride and bridegroom come from the same background and could therefore be married without legal objection from the girl's family. The same objection is not legitimate to a man who can marry beneath his class if he so wished.
<i>Khul'</i>	a woman's repudiation of her husband by which she "buys herself" through relinquishing all her financial rights due her from him (<i>nafaqa</i> , <i>`ida</i> , <i>mut'a</i> compensation)
<i>Madhab</i>	Islamic School of law. Four are important for Sunni Islam, namely: Hanafi, Maliki, Shaf'i and Hanbali. The Hanafi is the school most recognized as the source of Personal Status Laws in Jordan today.
<i>mahakim diniyya</i>	religious courts
<i>mahakim khassa</i>	special courts
<i>mahakim nizamiyya</i>	national courts
<i>Mahr</i>	dowry
<i>Muftis</i>	deliverer of formal legal opinions
<i>Mu'akhkhar</i>	part of the dowry paid at the time of the husband's death or divorce
<i>Muqaddam</i>	part of the dowry paid at the time of marriage
<i>Mustalzatihu</i>	what is entailed in a contract

<i>Nafaqa</i>	financial support due to a wife from her husband; also used to mean alimony due the wife after divorce usually estimated at one year
<i>Nashiz</i>	disobedient
<i>qada' `asha'iri</i>	Tribal law
<i>Qadi</i>	judge
<i>Qadi al-Quda</i>	Chief Judge of Sharia Courts
<i>Qisas</i>	are crimes involving murder and other forms of physical damage which are due the payment of <i>diyya</i> (blood-price)
Sharia	Islamic law
<i>shiqaq and niza`</i>	name given to family courts that deal with family quarrels and feuds
<i>ta`a</i>	obedience
<i>tabi`at al-tasarruf</i>	nature of the transaction
<i>tahil lahu shar`an</i>	legal to him
<i>tahmish</i>	to peripheralize
<i>talaq</i>	divorce
<i>tarahil</i>	mobile labor moved from place to place depending on project
<i>tasaruf</i>	right to administer or to dispose of
<i>tatliq</i>	divorce granted by a judge
<i>ta`zir</i>	crimes whose punishment is left to the judge to determine in Islamic law
<i>`urf</i>	traditions or customary law
<i>waliyy</i>	legal guardian

zawaj

marriage

zina

adultery

Executive Summary

1. This report was designed to study the legal constraints to women's work, to prioritize these constraints, identify the ones most likely to be successfully changed, and define other types of problems impeding women from entering the workforce or opening their own business.
2. Research covered (a) Published literature on women in Jordan, publications of different women's organizations, and publications of the Lawyers' Syndicate. b) Extensive meetings with Jordanian lawyers and women activists. (c) Attending lectures given to women groups and listening to the reaction of Jordanian women. (d) Attending workshops. (e) Assistance by three Jordanian legal offices in researching court cases and giving legal opinion.
3. Jordanian laws originate from *Shari`a*, tribal, Ottoman, modern and traditional laws. Personal Status Laws are based largely on the Ottoman Family Code, the Hanafi *madhhab* in preference to the others, on tribal law, and on modern laws. *`urf* (traditions) constitute an important basis for judicial judgments especially in regards to gender issues.
4. Jordan is signatory to international agreements that deal with gender and equality. By signing, Jordan promised to uphold and enforce equal rights to all its citizens including the right to work. Jordan's Constitution and Labor Laws guarantee equal rights to women without discrimination and ensuring freedom of choice. However, Other Jordanian laws contradict these statements making women subservient to the wishes of men and placing them under their direct authority. This comes through principles like *wilayya* (guardianship) and (*ta`a*) which treat adult women as not fully competent. Most important, a wife can only work with her husband's approval.
5. The reservations made by Jordan to international agreements concern personal status laws. This exemplifies the patriarchal outlook of Jordan's laws toward women and their employment. If there is a serious wish to put an end to constraints facing women in regards to work or owning their own businesses, the contradictions between Jordan's various legal codes will have to be put to an end.
6. Specific laws that discriminate against women are to be found in labor, personal status, social security and retirement laws. Severe hardship and discrimination also exists in the political system especially in regards to representation. Women are also discriminated against in regards to citizenship, nationality and residency. The combination of these laws have made women into dependents on men without full legal capacity and freedom of choice notwithstanding that the law says otherwise.

7. Labor laws constituting an impediment to women's entering the job market or owning their own businesses include missing laws, overtly discriminatory laws, and laws meant to protect women but which constitute a push factor out of the job market.
8. Personal Status laws impeding women from working include laws that require a husband's approval for his wife to work and the wife's obedience to her husband in regards to her movements, e.g. husband's rights allow him to control his wife's income from a job or business which reduces the incentive to work.

Part I: THE PROJECT

A. Challenges outlined for the consultancy

- a. An assessment of the laws and regulations that constrain women from engaging in business activities whether from inside or outside the home.
- b. The establishment of a sense of priority as to what legal and regulatory constraints are more urgent in the context of Jordan.
- c. The identification of those constraints which are actionable.
- d. The proposal of a plan of action that would result in the concrete reduction of the selected constraints.

Given the purpose of the consultancy, readings assigned, research and interviews I directed my activity toward three goals:

- Identify legal constraints that constitute a barrier to women's entering the job market as employees or as owners of business.
- Suggest legal and other solutions to these constraints.
- Point out invisible constraints that go beyond the law.

B. Scope of the Research

Legal constraints that stop women from entering the job market, open their own businesses or that cause them to leave their jobs include labor, personal status, citizenship, retirement, social security and criminal laws. Jordanian lawyers and activists I spoke with agreed that in Islamic societies “women” and “work” cannot be discussed without including “social relations.” Personal status laws determine social relations and therefore must be included as basic constraints limiting women’s access to activities outside the home or/and work undertaken within the home. Therefore, personal status laws as constraint constitute an important part of this report.

While election laws are less obviously relevant to women and work, there is no question that the greater number of women who could be members of parliament would entail a greater possibility for the success of legislation benefiting women. As for nationality laws, they constitute a serious source of lack of stability in women’s lives that keep them from enjoying full competency and increase their peripheralization and dependence. These two issues are only partially discussed in this report.

C. Sources and Method of Research

Books and Journals constituted the basic source for this research. Included here are books detailing and interpreting Jordan's various legal codes written by university professors, legislators, lawyers and judges. Published records of selective court cases as well as summaries of court cases are important for this work. Case studies are published in journals of the lawyers' syndicate. Summaries of *Shari'a* court cases are presented in summation books.

Records of the Business and Professional Women's Club particularly the minutes of their Hot Line: The Club gave me access to the records of their Hot Line and the Club's two lawyers, Hanan al-Qinna and Manal Shamut, discussed with me the legal cases sponsored by the Club in Jordanian courts. Both the Hot Line and the case records were invaluable sources of information.

Extensive discussions with lawyers in legal firms helping in collecting legal and court data, namely: the legal teams of Salah Bashir, Sa'id Kharaja and Ratib al-Tahir.

Attended lectures given by BPWC's staff in various schools to students and/or parents on subjects ranging from "what is law", "work contracts" to "marriage and divorce". One open discussion turned to family violence and physical abuse--by choice of an audience of married women.

Met with various ladies involved in women's rights groups who were very kind to give me their time and share their thoughts. Here I should include in particular Mrs. Hind Abdel Jabir, Reem Abu Hassan, Nur al-Imam, `Abla `Amawi, and Rihab al-Qadumi.

D. Persons I met with of important to this report:

Jamal `Abdal-Rahman al-Jabiri	USAID
Hind Abdel Jaber	President, PBWC
Lamis Nasser	UNIFEM
Towfic Shomar	CPNSS, Modern Montessori School
Judy Salem	Al-Kutba
Ahmad Furaysat	Univ. of Jordan, Library, Archives
Rihab Qaddumi	
Hind al-Nasser	Visit to Jordan River Foundation
Reem abu-Hassan	Lawyer and activist
Hannan al-Qinna	Lawyer, PBWC
Manal Shamut	Lawyer, PBWC
Salah al-Bashir	Lawyer, Salah Bashir office
Firas al-Mu'min	Lawyer, “ “ “
Mahir Hamdan	Lawyer, “ “ “
Rana Junbalat	Lawyer, “ “ “
Rawan `Antabawi	Lawyer, “ “ “
Nisrin al-Bashir	Scholar
Ratib al-Zahir	<i>Shari`a</i> Court lawyer and previous <i>Shari`a</i> Court judge
Hilda Ayoub	Federation of Jordanian Women
Mrs. Intissar al-Qihwi	Secondary school principal

Mustafa Hamarnah	Center of Strategic Studies, Univ. of Jordan
Sa'ed Karajah	Lawyer
Nour al-Imam	Lawyer, activist, Women's Federation of Jordan
Bothaina Garana	Al-Amal Foundation
Fadia Faqir	Associate Professor at University of Durham
Abla Amawi	United Nations
Sally Khalaf	Royal Press Staff
Asir Mada'in	Lawyer, Sa'ed Kharaja office
Amal Sabbagh	

E. Plan of Work and Limits of the research

There are limitations to the report that need to be pointed out. Since the research dealt directly with questions of law and legal practice, it was important that court records from various periods of Jordan's history be investigated. While Jordanian archives are filled with a very rich record of the life of women dating from the Ottoman period, we were not able to get access to these records in a way that would make research feasible.

The particular archives needed are court records detailing cases brought in front of Ottoman courts regarding disputes between various people. Here are included financial transactions, real estate transactions, partnerships, marketplace disputes and so on. Since in other Ottoman archives women figure strongly in these records, i.e. there is strong evidence that women constituted an important part of the economic sector, I expect to find that similar--if not exactly the same--results applied for Ottoman towns like pre-modern Jerusalem, Ramleh, etc.

Furthermore, personal status laws underwent critical changes during the modern period that have not been entirely in women's favor notwithstanding states' efforts to improve their life as part of state planning and mobilization. Had the archival record been made available for this research, we would have been able to test the theory regarding the origin of personal status laws which legalized the sole absolute right of husbands to divorce while limiting severely the wife's ability to separate from unwanted or abusive husbands. Another important theory to be tested was the origins of laws giving the husband full right to allow or forbid his wife from working, leaving the home or owning her own business.

Since modern personal status laws are characterized as *Shari`a* (Islamic Law), it is almost impossible to challenge them since Islamic Law is also characterized as being God's laws even though as Islamic theologians explain and write, there are many sources for such laws. However, because the first and indisputable source of Islamic law is the Qur'an, *Shari`a* gains particular legitimacy. If there is any chance of changing personal status laws--including and particularly those dealing with a woman's right to work and free individual access to business--it is important that we deconstruct discourses regarding sources of laws in practice today. To be able to do so, legal practice before the modern period need to be understood.

My plan was to do this in two ways. First by reading the archival record to determine which laws were applied by judges and how they applied them. At the same time, study the history of women, the claims and disputes they brought to litigate in court which indicate the types of business women were involved in, the property they owned, and the actual family and gender relations they negotiated. Second, study legal practices today and compare them against the actual sources of the *fuqaha`*, i.e. the theoretical basis of the *Shari`a* as it is applied today. Long discussions with Mr. Ratib al-Zahir, an ex-*qadi* in

Jordanian *Shari`a* courts allowed me to put a list of issues of particular significance in regards to the life of women today and to set out a plan for him to follow in assisting me with the research for this project. The issues Mr. Al-Zahir and we agreed upon are all interconnected and have to do with the ability of women to maneuver, the extent of women's agency, work, ownership of businesses, and independent action outside the control of "guardians". At the heart of the research is our effort to outline the social and legal philosophy behind modern personal status laws and how reflective these laws are of the *Shari`a* as seen through the eyes of different *madhahib* and in the eyes of modern laws. The issues and Mr. Ratib al-Zahir's response to them are included in Glossary 2 at the end of this report.

I have to point out that the assistance of Mr. Ratib al-Zahir and of the activist lawyer Mrs. Reem Abu Hassan who participated in our long sessions has been invaluable for this research and is opening further doors and questions regarding the process of understanding, deconstructing and finally proposing new laws. The answers given by Mr. Ratib al-Zahir were particularly important in offering suggestions regarding new laws or changing old ones in ways that do not contradict *`urf*¹ or *Shari`a* and hence reduce the opposition to them.

It has been my experience that societies solve their problems from within their own traditions rather than by the introduction of brand new ones. The human experience is such that there are greater similarities among peoples of the world than there are differences, and Islamic *fiqh* is rich with knowledge and experience and can be flexible, fitting with time and place depending on how it is interpreted and applied. It is ignorance of law that allows the concentration of power and its abuse, when laws are presented in familiar terms, people understand them. Unfortunately, the *Shari`a* and traditional *`urf* are usually understood through moral discourses of Islamic literary figures. Like anywhere else in the world, moralist literature forms an important discourse guiding society in its social relations and reminding people of the consequences of their sins. Moral literature has always influenced the legal opinion of the day, and that is no different in the Islamic world. Rereading original sources of *fiqh* is essential for correcting the normative view that considered what moralists talked about to be the actual law or even social practices expected of Muslims. Therefore, an important part of the exercise was to reread these laws and try to deconstruct actual legal precedent and what could be defined as Islamic law on the one hand and what was part of moralist literature on the other.

Looking at the archival record would have helped determine the discrepancy between legal interpretation and legal practice based on actual records rather than legal opinion (*fiqh* or *fatawi*) which are not binding in court. This we could not complete because the University of Jordan would not permit us to photocopy cases to be used as documentation for this report. Lately and through the efforts of Dr. Salah al-Bashir, the University of Jordan has written and invited me to read the archives at their location. I intend to take them up on their invitation for further research. Meanwhile I am making use of archival records from

¹ *`urf* is defined as rules by which members of society legislate for themselves how to deal with each other.

Egypt and secondary sources from Ottoman Palestine. Not the ideal alternative but second best.

A further limitation presented itself with the lack of full court records from modern courts. There are good records kept and published by the Lawyers Syndicate, but these are summary cases and do not give extensive information about the details of the case. The help of two legal offices, Sa'ed Karaja and Salah al-Bitar was sought in that direction. But it seems that access to these records are not available in Jordan even to lawyers, and therefore the findings of this report are based on cases researched and provided to me by Sa'ed Karaja's office and my own research through the publications of the lawyers' syndicate. Mrs. `Assir Mada'in worked closely with me to help research the particular questions and records needed, she also took me to various women's groups and was able to provide me with records of their legal work that otherwise I would not have been able to see.

Another important source for legal records was the Business and Professional Women's Club which keeps complete records of the legal cases it sponsors for litigation in court and of their well-documented and impressive Hot Line. The BPWC leadership, Mrs. Hind Abdel-Jaber and Mrs. Bothaina Garana, agreed that these records be made available to me but with clearly understood lines of anonymity which I am following impeccably in this report. The two lawyers Mrs. Hanan al-Qinna and Mrs. Manal Shamut spent long hours in making these records available to me while ensuring that full anonymity of the persons concerned was kept. I am in their debt.

Besides the legal record, this research required that I understand the activities of Jordanian women's groups. This took a substantial amount of time for meetings with women leaders, attending workshops, etc. Jordan has an amazing array of women's societies and groups, and I have met with women leaders whose work, experience and dedication are an example of the unknown forces in social change in Islamic societies today and in the past. I am reminded here of the words of a previous US ambassador to Egypt who approached me after a presentation I gave at the Mayflower Hotel in Washington D.C. sponsored by the Middle East Institute. He asked me if I knew what Egypt's greatest asset was. When I had no answer, he said to me "Its women." I remembered his words as I met with women activists in Jordan who are working under incredible constraints to try and change the laws controlling the life and work of women. From an overview of these activities given to me by Mrs. Rihab Qaddumi, who was kind enough to provide me with her time and an extensive literature about legal proposals, successes and failures, undertaken by Jordanian women groups, I could see that slowly but surely the situation is in fact improving and that though the government looks hard-line in its approach to these socially sensitive issues, there is support at the highest levels that could be directed toward greater change.

Even though this research was begun with particular parameters in mind, it developed and grew through discussions with Steve Wade and Zaki Ayoubi of AMIR who were open to ideas, very helpful and insightful as to the possibilities of this project. They therefore encouraged me into looking into areas beyond what is legal to see what other avenues can

present possibilities for future work on women's issues. Therefore, I am including in this report my preliminary findings regarding engendering based on a survey of text-books used in primary schools. Other suggestions include methods by which knowledge of the law could become more effective. Jordanian organizations are already active in holding lecture series to inform and to discuss questions of particular relevance to the life of women. The Business and Professional Women's Club is very active in this area and I was fortunate to attend numerous lectures with Hanan al-Qinna and Manal Shamut. This activity should be increased and supported as much as is possible. There are also other avenues through which knowledge of the law, work possibilities, women's rights already included in Jordan's laws, etc., can be relayed to Jordan's people, men and women alike. There are other possibilities that I explore in this report.

Finally, the plan of work I set out is to first discuss Jordanian laws and the sources of these laws. My intent is for the reader to have some background about the subject since the issues are all intertwined. A second reason was to show how diverse the sources of law are in Jordan and therefore to deconstruct the idea that the laws applied in various types of Jordanian courts stem from a single source of law. For example Personal Status Laws are not based exclusively on the *Shari`a* as is accepted, rather these laws, their execution, and the philosophy undermining them are a combination of *Shari`a*, tribal, and modern laws.

Part II: INTRODUCTION

Why Jordan?

Jordan is ideal for this type of study for a number of reasons. To begin with, its population of four million makes it a manageable model in which efforts to change the law and the results of such efforts could be easier to study than another Muslim country with a much bigger and diverse population.

Secondly, Jordan is a Kingdom led by a young monarch with a positive outlook toward change evidenced by his actions in changing laws regarding honor crimes. Both Queen Nur and Queen Rania have shown deep interest in women's and children's issues through their various important projects. Princess Basma is very active and highly regarded by women activists in Jordan. So there is support for change at the highest level of the state.

Third, Jordan has numerous and varied women's organization already in place to undertake the effort to push toward change. These organizations have long experience in this field and are led and staffed by very highly qualified and experienced women and men. In other Muslim countries you would have to start from scratch to build such an infrastructure.

Fourth, from the various seminars I attended and reports I read (including the important reports Unemployment in Jordan-1996: Preliminary Results and Basic Data researched and compiled by the Economic Studies Unit, Center for Strategic Studies of the University of Jordan and Women's Economic Activities in Jordan: Research Findings on Women's Participation in Microenterprise, Agriculture, and the Formal Sector researched and written by Linda Oldham and Donna Flynn of the International Center for Research on Women, AMIR, February 1999) it is clear that economic development in Jordan cannot take-off (Oldham and Flynn's assessment that the macroeconomic picture in Jordan is sluggish at present with an average annual growth estimated at .8% to 3%) without a greater participation of women in economic activity either as employees or owners of business. This fact alone should form a main incentive for limiting constraints toward greater participation of women in the economic and productive life of the country. Since a lot of the constraints are actually "constructed" constraints (which this study endeavors to show), changing the laws may be a real possibility.

Fifth, as a country well positioned for leadership among Arab and Muslim countries, Jordan could also carve for itself a leadership position in regards to women and their participation in public and economic life. Without doubt if the efforts of women's groups

to change gender law succeeds in Jordan, this would provide a concrete example to other states to follow and it would give Jordan international recognition.

Sixth, Jordan has already taken impressive steps toward providing laws protecting and helping its people achieve a respectable life. Already Jordanian women have a very high literacy rate when compared to other Arab or Muslim countries: 92.6% attend at least six-years of school and nearly 50.2% graduate from the secondary school system. While women students constitute no more than 35% of students in higher institutes of learning, they represent a strong percentage of students in vocational training (80% in nursing, 54% in commerce).²

A number of laws are particularly noteworthy of mention as gains for Jordanian people. Here can be included the law requiring that all businesses employing fifty or more persons that are suitable for the employment of handicapped persons, employ at least 2% of its personnel from handicapped graduates of training institutions for handicapped opened in Jordan.³ Laws pertaining to women that are particularly noteworthy include a woman's right to include conditions in her marriage contract, a right which other Muslim women are fighting for and unable to achieve. Employment of women as court judges is a big plus and Jordan is in the vanguard of this experiment. It is hoped that these steps will continue.

² Jordanian Women's Guide to Participation in Public and Political Life (Amman: Al Kutba Institute for Human Development and the Konrad Adenauer Foundation), p. 22.

³ Article 13 of Jordan's Labor Law regarding employment of handicapped, published in Majmu'at al-Tashri'at al-'umaliya (Amman: Niqabat al-Muhamin, 1997), p. 10.

Sources of Jordan's laws

1. Islamic Law (*Shari`a*):

The Islamic *Shari`a* is a recognized part of Jordanian laws. It is applied in particular to personal status laws which deal with marriage, divorce, child custody, inheritance and *awqaf* (religious endowments). Before the nineteenth century, *Shari`a* courts were the main courts handling legal disputes between members of the public. People took all sorts of personal disputes in front of the *qadi* who rendered his judgment according to the specifics of the case guided by the particular *madhhab* (juridical school) to which he belonged. There were four such schools recognized in the Ottoman Empire namely, the Maliki, Hanafi, Shaf'i and Hanbali. While the Ottomans deferred to the Hanafi code, populations from Syria down to Egypt preferred the Maliki and Shaf'i, with large percentages of Syrians adhering to the Hanafi and North Africans to the Maliki. In Egypt and Palestine, the Shaf'i and Maliki were dominant. Without going into too much detail, it should be pointed out that while the Maliki was preferred in areas where tribal and kinship ties predominated, the Shaf'i was preferred in settled, urban and agricultural areas. As for the Hanafi, it was preferred among the richer capitalist and merchant classes and those related or in service of the Ottoman government.

In that system, it was up to the individual to choose the *qadi* of the particular *madhhab* and courthouses usually had *muftis* and *qadis* if not of the four schools, then of the schools to which most of the residents of the town or area belonged. The *qadi* in turn applied Islamic law from these schools as well as the *`urf* (traditions) acceptable to the population of the particular district. More often than not, the judge himself originated or was of long residence in that area. So there was a certain extent of maneuverability among the population and in the hands of the judges to pick and choose the laws to be applied.

Interestingly, *Shari`a* courts did not serve Muslims alone but they also served non-Muslims who came to court to register land, document inheritance, solve property and business disputes and even marry and divorce against their churches' orders. Ottoman archives illustrate that Christians and Jews often came to court to divorce husbands or wives, to take a second wife or to buy slave-women.⁴

Modern reforms divided the court system into various types and each was provided with a legal code that judges were asked to apply in reaching their decisions. This happened by stages with the Jordanian Constitution of 1928 which

⁴ Christian churches found such practices unacceptable, but *Shari`a* courts functioned more as civil courts than they did as religious courts and provided services to anyone who came there.

recognized the existing Ottoman codes as applicable in Jordan until such time as they are changed. In the 1952 Constitution, the legal system was reconstructed and the court system was divided between *mahakim nizamiyya* (national courts), *mahakim diniyya* (religious courts), and *mahakim khassa* (special courts). The first were given the responsibility of looking into all civil and criminal cases including cases brought by or against the government. The second, religious courts, were to serve Muslims and non-Muslims. *Shari`a* Courts were to look into personal affairs of Muslims, while Milla councils of different non-Muslim sects would each determine personal affairs of their constituency. Religious endowments (*awqaf*) of the various communities would also be the domain of these religious courts.

Thus civil courts were given the job of handling disputes involving trade, exchange, property, and crimes. Newly created *Shari`a* courts were given the responsibility to handle what became known as personal status laws that deal with all matters of private life. As in civil courts, *Shari`a* court judges were given a code compiled by state committees and lawyers which they were asked to apply in all marital, inheritance and child custody disputes. Executive law was also established by state committees. So even though the personal status law applied in Jordan today is based on the Islamic *Shari`a* it is a selective reading of the *Shari`a*, specific laws selected while others discarded, and a new philosophy which took state interest into consideration and brought a modern conceptualization of gender (late nineteenth and early twentieth century) as a binding discourse for these laws. In other words, one can call the laws *Shari`a* but the particular laws themselves, the application of the laws, the philosophy behind the laws, and the execution of the laws were all different from what was applied earlier.

One great difference is in the execution of law. Previous to the modernization of law, a *qadi*'s decision was executed right away. One can call it "immediate justice". This did not apply to death sentences since the system was much more complicated and the approval of higher authorities had to be received first. But a good example and pertinent to this study has to do with conflicts over a particular spot in the marketplace, once witnesses are produced and the *qadi* reaches his conclusions (usually by consulting the heads of the marketplace and guild-heads), the decision is executed, compensation paid and public space determined. Another example, if a wife proves that her husband is not supporting her as he should, i.e. providing her with *nafqa*, and produces the necessary evidence, the judge would permit her to sell her husband's goods, mortgage his property, and do whatever is necessary for her to get her *nafqa* and support her children. This is not to say that the justice system was so much better then than it is now—a case that would be hard to make. But there are lessons to be learned from the different ways by which *Shari`a* law was interpreted and executed then and how it is executed now when women have to wait under great hardship for any *nafqa*, which often leads them to relinquish all their rights in return for a fraction of what is due them. Most importantly, before the modernization of law, women who wished to be no longer married to their husbands and appealed to the *qadi* to divorce them were never

forced to return to the husband to live with him. Whereas marital disputes are supposedly solved today as they were before, the process and interpretation of rights is different and works against women as this report will show.

2. Ottoman Codes, the Mejelle and Family Codes:

Legal codes from the Ottoman period constitute an important direct source of Jordanian laws. These codes were introduced beginning in the nineteenth century as part of the Ottoman Tanzimat and other forms of reforms. At that time the Ottoman Empire was trying to modernize and satisfy European pressures as a "new world order" was evolving which was making the world increasingly more interdependent. While courts systems differed throughout the globe, the nineteenth century witnessed the inception and evolution of a new outlook toward law that took into consideration intense capitalist and commercial conflict and rivalry. World changes were bringing about the rise of a new court system which was being necessitated and driven by, as well as internationalized by, conflicting commercial interests in their struggle to have greater access to local markets, labor, and resources.

Dividing courts into different areas of interest with specific courts responsible for what became known as "personal status law" was not unique to Jordan. Rather, while there were great variations depending on place, time and specific circumstances,⁵ similar courts appeared in many places globally, including North Africa, China, Turkey, India and Tunis. England too witnessed the same type of legal specialization. In England, as in Egypt, Turkey and other spots around the world, legal reforms in the nineteenth century took place in many bits and pieces. These changes are usually dated from 1854 with a series of statutes leading to the Judiciary Act of 1873 by which the British Parliament completed a basic reorganization of British courts where the British High Court of Justice was divided into three parts, one of which was named "Family Division"⁶

The logic of dividing the courts was to introduce administrative rationality. This meant specialization and homogenization of laws so a centralizing nation-state would have greater control over its citizens and their affairs from the center. So the logic, based on the commercial and capitalist interests of the day, was to divide the legal system into courts specialized in the commercial/landed property, the criminal, and the personal. Names given to the courts and legal codes differed from one place to the other as did specifics of the law, but the essential logic remained the same whether we are talking about Western or Middle Eastern countries, i.e. separating what was considered "personal", i.e. dealing with family and gender--

⁵W. J. Mommsen and J. A. De Moor, European Expansion and Law (Oxford: BERG, 1991), p. 5.

⁶ Martin Shapiro, Courts: a Comparative and Political Analysis (Chicago: The Univ. of Chicago Press, 1981), p. 105.

including divorce, marriage, marital disputes of all kinds but not including marital violence or crime.

Even the patriarchal outlook was largely the same. In nineteenth century Europe, a wife was under the full control of the husband who could incarcerate her at will. In England, this right was based on laws that remained in effect all the way into the twentieth century. In the Islamic world which experienced colonial rule, Egypt and Tunis for example, this right to incarcerate was imported in what became known as *bayt al-ta`a* and *dar al-ajwad* respectively. *Ta`a*, i.e. a wife's obedience to her husband was, of course, part of *Shari`a* Islamic laws, but here it was not an absolute right to hold a wife against her wishes, rather it was *ta`a* in return for *nafaqa* that guided the debate. A husband had the right to *ihtibas* as long as he supported his wife. While *ihtibas* can be and has usually been interpreted as having the sole right to sexual relations with a wife, modern laws accepted *fiqh* interpretations that interpreted *ihtibas* as giving the husband an absolute right to his wife's obedience and refusing her to leave the home without his approval. Archival records prove that it is not this interpretation chosen for modern personal status laws that was applicable in courts before the modernization of law and courts.

It should be added that while Europe moved ahead and changed these laws with changing circumstances particularly after the First World and because of the devastation the war caused, the Middle East kept holding on to them.

Given world transformations the Ottoman Empire was forced to introduce changes to its legal system. While the system already allowed for different types of courts (e.g. non-Muslims had their own sectarian courts and foreigners were judged in their own embassies according to the Capitulations), there were brand new issues that had to be handled. Perhaps the most important, yet the least known has to do with citizenship and nationality—to be dealt with later in this report. The Ottoman Civil Code of 1867-1877 modeled after European—French and Belgian Code Civil—formed the basis of the Jordanian Civil Code. The legal system departed from what had been practiced in Ottoman courts before. Where there were no reciprocal laws, European codes were applied directly. Furthermore, European precedents from European, particularly French, courts, were used as precedents for legal decisions in Arab courts.

3. European codes:

European laws made their way into the court and legal systems of Jordan and other Arab countries in different ways. First as part of Ottoman nineteenth century reforms which adopted European systems sometimes willingly and other times under duress. For example the Ottoman Family Code became the first step toward modern personal status laws that continue in power in Jordan until today. The Ottoman Family code brought in

a new outlook toward gender, constructed society as family units based on the nineteenth century nuclear family which was both a product and a need of Europe's new industrial society. As part of this code, the Hanafi code became enforced throughout the Ottoman empire -- supplemented by particular laws from other *madhahib*.

Another important law which the Ottomans finally accepted but under duress were nationality laws which continue to be the basis of important discrimination in Jordan today. According to Ottoman laws (Firman, 1869), and following legal practices in Europe at that time, a woman's nationality was defined as "following that of her husband". The children from such a marriage were then defined the same way. In other words, faced with new questions like nationality which were moot to the Ottoman world as they were to Europe itself earlier in the nineteenth century, gender became the issue defining nationality rather than domicile, allegiance, interest, birth, or any other factor that could be used to allow children to take their mother's nationality. Today, nationality laws continue to be one of the most important issues confronting Jordanian women as it does women of other areas of the previous Ottoman Empire. It has become more pertinent because of the greater movement of populations and inter-marriage between groups. For Jordan, marriages between Jordanians and Palestinians and the unwillingness to change laws which really date from the Ottoman period continue to constitute real hardship. Europe, where the laws originated, has moved away from these laws tying the wife to the husband, yet these European laws continue to form the basis of citizenship and nationality in Jordan and other Arab countries.

Another interesting case of the application of modern law has to do with crimes. Here again the intermixing of law between the modern, traditional and Islamic works to put women at a disadvantage. For example, Islamic law divides crimes into three types, namely *hudud* which are considered to be crimes against God whose punishments are clearly defined. Here are included adultery, defamation of respectable women, drinking alcohol, forced robbery, immorality/perversion, and apostasy. *Qisas* are crimes involving murder and other forms of physical damage which are due the payment of *diyya* (blood-price). *Ta'zir* involves other crimes than those defined by *hudud* and *qisas* and which are left to the judge to determine and whose punishment is determined by the judge. Here are usually included cheating and usury.

Criminal laws in contemporary Jordan do not apply these categories. Rather modern western procedures are applied in regards to crime. For example, a thief's hand is not cut off but prison sentences are the usual practice. Also, banks in Jordan give interest and that is quiet acceptable to the population. It is therefore curious as to the reasons why Jordanian courts continued to accept such legal practices as reduced sentences for honor crimes in which a father or brother kills a daughter or sister because they suspected her of immoral actions. The reduced sentence is based on *`urf* and the importance of family honor. Here lies one contradiction of the law where one type of law is applied in one way while another is applied in another way.

Another criminal law that does not follow *Shari`a* has to do with the punishment for *zina* (adultery) According to the Qur'an the punishment for *zina* is whipping 100 strokes for the unmarried man and woman who have committed *zina*. Modern criminal law regarded corporeal punishment to be primitive and unacceptable, not applicable to modern conditions. The Ottoman *Mejelle* which followed to a certain extent practices in Ottoman *Shari`a* courts, did not include either whipping or stoning as punishment for adultery. Modern laws, which followed the *Mejelle* and modern law, therefore followed different procedures and determined different forms of punishment for adultery. For example, the *waliyy* (legal guardian) was given sole right to ask the authorities and the court to intervene in case of adultery involving a minor. Otherwise the state did not prosecute. A husband was given that same right but the wife was denied it in case her husband was a proven adulterer. Giving the *waliyy* such a right followed from the same logic of *diyya* laws which allowed a victim's family to demand retribution in the form of compensation, itself a method stemming from tribal law. Most importantly, even if the *waliyy* (guardian) asks the court to look into the matter, there is no corporeal punishment involved. Rather according to Jordan's laws, the punishment for an adulterer or adulteress is a six month to two years prison sentence.

This example regarding the laws of *zina* illustrates how the combination of laws from different sources and categorized in different legal codes has been an important method followed in legislating modern legal codes in Jordan as in other Arab and Islamic countries. Here is a law regarded not only as Islamic but as dictated by the Qur'an that was changed to fit with time and place. The same method could be applied in regards to other laws.

Unfortunately the very categorization of laws into secular under which criminal laws are placed, and religious under which personal status laws are placed, make changes in personal status laws difficult. This categorization was actually a function of the modern state which was thereby able to change laws deemed necessary allowing for new forms of economic exchange and a different handling of crimes.

4. Tribal law (*qada' `asha'iri*):

Tribal laws are a recognized part of Jordanian laws. But just as in the case of *Shari`a* law, tribal law is applied selectively and according to modern *`urf* much more than according to actual tribal practices. It should be noted that tribal laws constitute a major part of laws in the Arab world even though this fact is not readily recognized. The laws are sometimes overt but most of the time they are integrated in the selectivity of actual laws included in personal status laws.

Selectivity of laws has worked toward greater patriarchy perhaps because concerns in tribal context where a woman is between her people and clan and therefore under their direct protection and support is different than in the urban context

where women could be in daily contact with strangers. Furthermore, in the rural context certain freedoms and functions that women enjoyed were curtailed under more male-dominated systems. Here an example that comes readily to mind is the overwhelming control given to the husband in regards to his wife's movements. Where she goes has to be with his permission and leaving the home without his permission allows him to get a legal injunction against her declaring her *nashiz* (disobedient) by which she loses her right for the financial support he is obliged to give her by law. A wife's movement within her clan was of a completely different nature than in the urban centers, and even though the honor code applied in both, in the tribal context there was not that fear and suspicion of the public space.

It is usually assumed that tribal law is based pretty much on tribal practices since the earliest times. That is not the case and tribal law like all other codes has changed with historical transformations. A good example has to do with women judges. Today Jordan is more advanced than other countries because Jordan took the courageous step of accepting a woman's ability to sit as a judge in court and render decisions regarding legal disputes. This is a far step ahead than other Islamic countries like Syria or Egypt that have yet to accept a woman's ability to judge without having "her emotions entangled". Interestingly, women are not new to the judiciary system in the Arab world, according to one author: "Women played an important role in the justice [system] during the *Jahiliyya* [pre-Islamic period]. They played an important role in solving and settling problems between tribes and for correcting obvious abuses. These include Hind bint al-Hassan al-Ayyadiya, Sakhr bint Luqman, Fadila bin `Amir b. Al-Zarb, Hizam bint al-Dayyan, and others too many to mention here."⁷

Tribal laws and courts were an actual reality in Jordan until their cancellation in May 1976. Even after the cancellation of tribal courts, certain aspects of these laws were codified into law for Jordan as a whole. *Diyya* laws (blood-price as compensation for harm caused to another) were codified into law in 1989. These laws itemized the crimes--assumed to be unintentional crimes--that can be compensated by the payment of *diyya* to the victim or his/her family by the perpetrator. The amounts to be paid as compensation for each specific crime was also stated. For example, the *diyya* for unintentional death was established at ten thousand Jordanian dinars in 1989. The law also took into consideration other forms of death which were not itemized and added an extra third of the *diyya* for death. Here the method in establishing the *diyya* for various crimes followed closely Islamic practices, determining estimates for each crime at a certain percentage of the full *diyya* for death. For example, the *diyya* for forced termination of pregnancy due to violence perpetrated on the mother by someone else was one-tenth of the *diyya* for loss of life.⁸

⁷ Ahmad Abu Khusa, Al-qada' al-`asha'iri bayn al-Madi wal-Hadir (Amman, 1990), p. 19.

⁸ Ibid., p.93-96.

More importantly, the tribal outlook toward gender continued to form the basic philosophy toward gender in Jordanian society and is therefore a basic part of *`urf* practices. Tribal laws therefore constitute an important basis to the way judges rule in Jordanian courts. That there is a constant need for a *waliyy* to directly or indirectly approve the marriage of his adult daughter, is based on the assumption that a daughter belongs to her people and carries family honor with her. Also reduced sentences for honor crimes were allowed by court judges even though most of the victims were quite innocent of the crimes for which they were killed. Allowing reduced sentencing only helped increase the number of such crimes. Yet, the judges gave credibility to the act by legitimizing it. The same logic applies to a husband's absolute power over his wife, her movements and her work.

5. *`urf* or traditional law:

The Jordanian Civil Code is explicit about the importance of traditional law and traditional usage in Jordan's legal system. For example, Article 173-ii dealing with contractual consent states: "Silence is considered granting permission if it [i.e. said silence] is considered consent according to *`urf*." This is particularly important for women since her vocal consent can be bypassed in important transactions like contracting a marriage. *`urf* can also bind the actions of a court judge since he is expected to apply tradition as part of his decision-making. Article 177 of the Civil Code details: "In contracts which are open to *faskh* (annulment)if [the parties to the contract] do not agree on a specific period, the judge is permitted to decide it according to *`urf*." The Civil Code adds another level to traditional law based on the "nature of the *tasaruf* (right to administer or to dispose of)." Article 202-ii states: "the contract does not limit the contractor's responsibility to what is included in it, but it also entails what is determined (*mustalzamatihu*) according to the law, *`urf* and the nature of the transaction (*tabi`at al-tasarruf*)."

6. International laws:

Jordan is signatory to various agreements at the International levels with direct relevance to women. Here the most important is the *Convention for the Elimination of Discrimination Against Women* ratified with reservations by Jordan at the beginning of July 1992. This agreement involves basic human rights and demands that such rights be equally enjoyed by both men and women. The agreement stresses in particular fundamental economic, political and social equality, and demands that women be given equal opportunity in all these areas. To assure that such equal rights become fact, the convention calls upon its signatories to create the legal and executive instruments by which equal rights become a reality and not mere rhetoric.

The reservations that Jordan declared as part of its signing this convention tell us a

great deal about the outlook toward women and legal rights in Jordan. While there was total acceptance of equal job opportunity and other declarations regarding women and work, the reservations made by Jordan emphasize the patriarchal character of Jordanian laws and illustrate how women, their work and freedom of choice are controlled by other aspects of the law. The following are reservations made by Jordan to the treaty. The *Shari`a* was used as the reason for the reservations:

- a. Reservations regarding Article 9-ii concerning nationality rights which demand that children of mothers receive the nationality of the mother as they do the nationality of the father. Article 9 of the Convention was meant to address the severe global problems experienced by women and children who face dislocation and homelessness because of nationality laws. This at a time when intermarriage between nationalities is a concrete and ever-growing fact. Jordan's laws do not grant a woman's children the Jordanian nationality or even residency unless the father is also a Jordanian. I was told by one feminist leader in Jordan that she was granted a residency for her Philippinian domestic servant but was denied a residence permit for her unmarried daughter whose deceased father was a Palestinian-American.
- b. Jordan also made reservations to the wording in Article 16, i-c, d, g of the Convention which called for equality between men and women regarding contracting marriage, rights during marriage and equal rights and responsibilities in regards to divorce. Equal rights would have impeached on the prerogative of the husband to divorce at will and the control of a wife's ability to get out of a marriage that is abusive to her. It would also mean that men could no longer call their wives to obedience (*ta`a*), and forbid them from taking a job as a condition of being married. Jordan did commit itself to changing its laws to fit with the requirements of the Convention, but that has yet to happen and given the reservations made, is probably not to be fully implemented.

Conclusions and Suggestions

Even though Personal Status Laws are said to be based on the Islamic *Shari`a*, which makes it almost impossible to touch these laws or ask for their amendment, the realities are different as can be seen from the above discussion on the sources of law in Jordan. The

basics of gender laws are *Shari`a* laws, but *Shari`a* applied selectively and subject to a historical process during which different types of laws and the philosophy behind them diffused to create the laws practiced in Jordan and applied in Jordanian courts today. If there is any hope of changing these laws, the legal codes in practice today need to be deconstructed before alternatives can be suggested.

By alternatives is meant different laws that stem from Jordan's own historical traditions, from *fiqh* (Islamic Jurisprudence), and from legal practices in Pre-modern *Shari`a*/Ottoman courts. Two points need to be emphasized: a) *Shari`a* legal practices were different then than *Shari`a* practices today, and b) *Shari`a* is flexible fitting with different times. Once this is established then it would be made clear that the *Shari`a* codes in practice today are based more on the Ottoman Family Code and should therefore not be seen as a permanent and unquestionable *Shari`a* in the sense of being God's words that cannot be touched. This should give women groups fighting for this issue an edge in two ways:

1. The job of studying the past is a big one and needs great efforts. Deconstructing laws is not a simple matter but a necessary one if they are to be challenged. This is a job that Jordanian women, highly intellectual and aggressive lawyers, are more than capable of performing given guidance, assistance and financial help. This report tries to show them some of the ways this can be done, but it is by no means comprehensive. That will be up to women's groups or individual women. The method is complicated and time consuming but should be productive.
2. The process of studying the question of changing law from this different perspective should outline new lines of action for activists and women's groups. While lobbying would be extremely important here, there has to be a media campaign to inform people of the realities of the laws and the past. It is unfortunate that the archives remain so closed up, choosing particular court cases and presenting them to the public would be the best way to influence society as a whole and actually change *`urf*. The reading material available today to the public is mostly in the form of Islamic moral literature which readers take to be the actual truth of life under Islam, at least the idealized picture of that life. References to History in the media are also based on this moral discourse, a discourse which was written by men in a different context and as a form of moral preaching.
3. The contradictions between one legal code and the other need to become a focus of women activists. Not only the codes themselves but the philosophy behind them. For example while personal status laws emphasize the good of society and the family, the civil and criminal codes take the rights of the individual into consideration. Yet honor crimes deny individual rights. This works against women since human rights which are the philosophical basis of "individualism" are not taken into consideration in personal status laws. This dual philosophy is at the heart of situations in which a woman could aspire to be a prime minister or a court judge and yet could face being declared *nashaz* if she refuses to accept her

husband's demands that she stop working. Civil laws encourage property, work, and economic independence, while personal status laws encourage a woman's dependence on a male relative and economic peripheralization.

4. The University of Jordan has started a women's studies program. This is unique in the Arab and Islamic world. It needs to be strengthened and encouraged. Women and law in particular must be emphasized here and young men should be encouraged to enroll in these courses. Jordanian lawyers and activists could be invited to lecture there and scholars can be brought in to spend time on the faculty of the University to teach and advise. Women activists from other parts of the Islamic world can be invited to share their experience. Public participation could also be an option especially if lectures are in Arabic and could allow a wider participation by young Jordanians. An effort needs to be directed toward changing *`urf* but as part of consensus and through local traditions and beliefs, terms familiar to Jordanians.

Part III: LABOR LAW⁹

Two general statements need to be made about laws pertaining to women and work: They are (a) contradictory and (b) patriarchal. The Jordanian Constitution¹⁰ declares the full equality of men and women and grants women equal right to work by making work a “right” of all citizens. Yet various legal codes (labor, personal status, citizenship, retirement and criminal) actually peripheralize (*tahmish*) women by making them into male dependents and de facto deny women full legal competency (*ahliyya qanuniyya*, *ahliyya kamila*) even after reaching the legal age of majority. This is done through a combination of patriarchal family laws, state standardization and homogenization of law, and the social belief that women need to be protected. The result is that, even while Jordan exerts efforts to allow women greater participation in public life, the laws act as a push factor forcing or encouraging women to leave the workplace.

Women’s participation in the economy:

The figures concerning women and work differ depending on the criteria used and the particular compilers. According to the Flynn-Oldham report, Women’s Economic Activities in Jordan, “12.5 percent of Jordanian women 15 years of age or older are currently working in either short-term/seasonal activities , micro enterprise, agriculture, or salaried employment. Of the above group of currently working women, 12.4 percent are engaged in micro enterprise activities, which is equal to approximately 1.5 percent of the total population of Jordanian women. In 1998 estimates, this is equal to 33,000 women.”¹¹

Another study estimates that women’s participation in the economy exceeded 16%.¹² The same study also found that the average working years for women did not exceed 3.7 years and only a small percentage ever own their own businesses. This leaves a serious question as to why women do not stay employed. An obvious reason for leaving a job would be because of marriage even though the Oldham-Flynn study does not give this cause too much importance. The Konrad Adenauer study calls attention to this:

More than 90% of young Jordanian women marry, on average, by the age of 24.7 years. If it is the first marriage for both spouses, their husbands will be an average 3.5 years older than them. 42.5% of all married couples are first or second degree cousins or distant relatives. However, consanguineous marriages are declining proportionately with rising education levels amongst women. Many women stop

⁹ Labor Law number 8 for 1996.

¹⁰ Jordanian Constitution of 1952.

¹¹ “Women in business constraints”, Sonbol/Consultancy. Article I.

¹² Jordanian Women’s Guide to Participation in Public and Political Life (Amman: Al Kutba Institute for Human Development and The Konrad Adenauer Foundation), p. 23

working outside the home once they marry, or after the birth of their first or second child, unless both spouses are forced to work for economic reasons.¹³

These findings are interesting because they tell of the changing social scene. There seems to be a close corollary between education and women marrying later in life. There is also a smaller age disparity between husband and wife in later marriages. My observations—lectures attended and questions asked to women and school-girls attending—confirm this and also indicate a close connection with the particular class an individual woman belongs to. Poorer women and those living outside of the center of Amman tended to marry earlier. Women who moved to these areas also stopped working to take care of their children and home. Curiously, records of the Business and Professional Women's Club showed another trend. Better educated women often married lesser educated men—sometimes substantially less educated—and quite often did not work or stopped working because the husband wished it. The records also show that women opted to leave work after having given birth. The incentive to stay in work was not one that attracted women and made them see it as essential to their welfare. Push factors, which will be discussed in this section, and social and marital expectations, to be discussed next section of the report under “Personal Status Laws”, are main causes.

¹³ Ibid., p. 23.

Obstructions Facing Women in Labor Laws

Philosophical basis of Jordanian labor laws:

Labor law takes into consideration the fact that labor relations are based on both legislature and on *`urf* (customs or traditions). Scholars of the law have therefore shifted between emphasizing the relations of production set up by these laws and between the social significance of the laws.¹⁴ This point is important for understanding how the social outlook toward gender is reflected in labor laws notwithstanding the basic declaration of gender equality included in the Jordanian constitution and labor laws.

Guarantees of Equal Rights in Constitution and labor laws

- “Work is the right of all citizens (*al-`amal haqq li kul al-muwatinun*) and “Jobs are based on capability” (*`ala asas al-kafa'at wal-mu'ahilat*).
- “All Jordanians are equal before the law. There will be no discrimination between [Jordanians] regarding rights and duties based on race, language or religion”. (Article 6 of the Constitution)
- By Jordanians are meant both men and women. Article two of 1966 Labor laws still in force in Jordan confirms, “Owner of Business: any person... who employs in any way one person or more in exchange for wages” and the worker/laborer/employee (*`amil*) is defined as “each person, male or female, who performs a job in return for wages....”.

These Constitutional Guarantees and Labor Laws are quite impressive in the equal rights they grant women. Jordanian laws actually go further in opening the door for women into areas that other Muslim countries have not as yet allowed. Here particular mention should be made of Jordan's recognition of women's ability to work as judges in civil courts. There are four women judges serving on the bench in Jordan today, whereas other countries considered to be more advanced in women's rights—e.g. Egypt—have so far refused such recognition.¹⁵ From what I have seen, the number of women judges should be growing in the future although there does not seem to be any effort toward including women in *Shari`a* Courts which come under the power of the office of the Chief *Shari`a* Court *Qadi* (*Qadi al-Quda*). This is curious since it is in *Shari`a* courts that Personal Status Laws are practiced and patriarchy continues to make it an exclusive arena for men. This is an area of concern that needs to be pointed out.

¹⁴ Ghalib `Ali al-Dawudi, Sharh Qanun al-`Amal al-Urduni (Jarash: 1999), pp. 5-6.

¹⁵ At present Egyptian courts have been delaying a case brought to court by a woman who has been denied the position of judge. Another case also delayed by the courts involves a woman who was not allowed to take the job of prosecutor.

Because of the patriarchal outlook, an outlook based on acceptance of tradition as a basis for legislature, labor laws actually differentiate according to gender and that on the basis of the need to protect women and provide them with particular needs. Since the areas from which women are said to be in need of protection are widely accepted as “problem areas” by society, legal efforts in that direction are highly acclaimed and are considered as special benefits for women. Many of the benefits are universally sought by women workers everywhere. Here we can include the right to a ten-week maternity leave due to child-birth for the purpose of child-care--six of which must be following the birth of a child (Article 70 of Labor Law). Also included is the requirement that any employee who employs twenty or more women must provide a child-care facility for the children of working mothers under the age of four, supervised by a qualified woman on condition that there be at least 10 children (Article 71 of Labor Law). While Article 71 makes it easier for mothers who have no other possibilities of child care, thus allowing them to work, it is nevertheless a two-sided sword since it encourages employers not to employ twenty women at any one time and/or to employ women on a temporary rather than a permanent basis.

However, “special benefit” laws include some intended to lessen the work burden for women and to keep them safe from “dangerous” jobs. These work against equal access to job opportunity. Any denial of access to work opportunity is necessarily a stimulus for keeping women unemployed particularly since the rules are based primarily on the idea that women are weaker biologically and of gentler constitution, i.e. in need of protection. Interestingly, it is not only women who are extended “protections” according to the law, but minors/juveniles are “protected” too. Minors in the labor force are defined as “each person, whether male or female, who is seventeen years old and not yet reached his eighteenth year.” In other words, non-adult-males are equated to adult women, both being in need of protection and having incomplete personal competency. Guarantees of equal job opportunity for women is thus severely undermined by the outlook toward what women can or cannot do, what they would be allowed to do, and the essentialist perception of what it is that they could not possibly be capable of.

Legal Benefits that Constitute Constraints

The following are examples of how some benefits work against women and how they strengthen the patriarchal discourse connecting women with marriage and dependency .

A. Night work:

“Women cannot work at night jobs nor in dangerous situations like quarries.”
(Article 69 of Labor Law)

Here I want to point to the exceptions to this law which are included in the codes and which are left to the Ministerial Council to mold accordance to need. It was left up to the Minister of Labor to determine the industries prohibited to women and the hours of work. These rules were to be generalized according to government policy and “individual circumstances [were not taken] into account” (glossary 3, p. 4). Exceptions to the above law include employees of hospitals and clinics, restaurants and tourist establishments, airline and airport staff, personnel employed in industries for transportation of people and goods, women involved in yearly inventories, women involved in preparation for beginning and end of season retail sales, or if there is fear of financial loss (for example, contamination of stored goods).

These exceptions to the law forbidding women to work at night are so broad and diverse that the very law is curious and seems to be market-oriented. When women are needed then they are allowed to work and when they are not needed, they are forbidden from working. This conclusion is supported by the 30 day a year/10 hour per day limit set as maximum for women’s night work. Since extra work is compensated at 125% to 150% of pay according to the law, women who wish to increase their income by working overtime at night are virtually cut out except when job pressure requires it. Even though most women would prefer not to work at night, the matter should be left open to individual choice. Controlling job choices and setting rules based on biological and socially perceived roles strengthens gender difference and makes women’s helplessness and dependency a basis for legal interpretation.

B. Social Security:

The Jordanian Social Security Law for 1978 (amended in 1979) is a comprehensive law intended to provide Jordanians and their family with security. The law provides for financial assistance in the following situations:

- Injury at work and work-related illnesses.
- Insurance against old-age, incapacity, and death.
- Insurance against temporary incapacity due to sickness or giving birth.
- Health insurance to workers and their dependents.
- Unemployment (Article 3 of Social Security Law).¹⁶

This law is applicable to all employees to whom Jordan’s Labor Law applies as well as public employees still in public service. Power over which sectors of society are to be covered by this law is given to the council of ministers, i.e. the executive branch of the government.

¹⁶ Majmu`at al-Tashri`at al-`umaliya, p. 97.

There are numerous problems with the Social Security Law of Jordan that discriminate against women:

1. Social Security laws are not applicable to unregulated and temporary jobs. Women are highly involved in these types of jobs and they do not have social security benefits—including retirement, health, and compensation for job-related injury, all of which are essential in today's society. This means that they are at jeopardy in the work place and have no support if laid off. The incentive to work is that much less for women involved in these types of jobs, yet they are usually those in greatest financial need.
2. Social Security Laws do not apply to family members working for a family enterprise. Usually such enterprises are owned by a father, husband or brother. If Jordan's laws regarding family ownership of businesses are uniformly enforced, then this would make sense, but what guarantees do women members of a family have and what benefits can they expect in case of injury, unemployment or family disputes which are quite common. Clearly there is an inconsistency in the application of these various laws.
3. Other forms of unregulated employment of particular significance to women, include domestic help and "those within the same capacity." Most domestic help are women and today a large percentage of those employed in domestic service, men and women, are non-Jordanians. Social Security Laws do not apply to non-Jordanians and abuses of foreign labor whether Arab or Asian is quiet commonplace. Other countries, e.g. the United States, demand that employees of foreign labor pay social security for them so that they could receive adequate coverage in case of injury, retirement or unemployment. There is no reason why Jordan's laws cannot take such an initiative to cover both Jordanian and non-Jordanian domestic labor.

C. Retirement:

Funds for the payment of retirement benefits are provided through:

1. Monthly contributions paid by employers on the basis of 8% of the salaries of his employees.
2. Monthly contributions that are taken out at the rate of 5% of an employee's salary on condition that the amount contributed by the employee not be less than 500 fils.
3. The amounts contributed by employees in return for [uncovered] periods worked earlier.

4. Earnings from these contributions.

In other words, the social security system of Jordan is funded pretty much the same way as elsewhere, and it is part of the rights of workers when they are employed. Social Security is supposed to cover everyone contributing to the system equally depending on the length of employment and the salary at the time of retirement. Gender should not be a basis for paying benefits particularly since it is not a basis in contributions made by the employees. Men and women pay equal amounts for same job and years at the job.

However, gender considerations introduced into the law actually differentiate according to gender regarding:

- Period of employment needed to deserve retirement benefits.
- When benefits can be retrieved.
- Who has the right to benefits.
- Conditions required for providing benefits due to death of the employee.

While the rules are generally considered to benefit women and were probably intended to make a woman's life and her family's life easier, in fact the differences in retirement benefits based on gender constitute a major form of discrimination against women and are without doubt a serious hindrance working against the sustained employment of women after entering the workforce.

i. Privileges extended to women in retirement laws:

Privileges extended to women and not to men are intended as a benefit to women who expect to stay home after marriage or who choose early retirement. Whatever the intention from these "benefits" they constitute a strong push factor for women to retire especially where there is financial need for the family such as marrying a son or daughter, sickness, or other forms of financial difficulty.

The following are the pertinent laws:

- According to Article 14 of Jordan's Labor laws: "Benefit payments deducted from the salary of an employed woman who resigns her job are to be returned to her (*tu`ad lil-muwazafa al-mustaqila al-`a'idat alati uqtuti`at min muratabiha*)."
- "A woman has the right to leave her job and receive her end-of-service bonus at the time of her marriage" ("*yahiq l'il-mar'a al-`amila tark al-`ammal wal'husul `ala mukafa'at nihayat al-khidma hal `aqd zawajiha*").
- Article 41 of Social Security Law: "Retirement entitlements are due to the insured man when he reaches the age of sixty and to the insured woman when

she reaches the age of 55.” Since the amount of retirement is based on the last two years of employment, clearly women retire at much less pension than men for the very same job (Article 43b of Social Security Law). Furthermore Men can retire after 20 years of service while women can retire after 15.

- Age for retirement is based on the stated retirement age for men and women set at 60 and 55 respectively. If a women wishes to retire earlier she would be reimbursed the monthly deductions for retirement and other benefits taken from her monthly salary while employed. This benefit was not allowed men. While early retirement and early receipt of benefits can be seen as a way by which women could receive a nest-egg through which to begin a business, the amount is hardly adequate for such a purpose and usually goes to pay for marriage or family expenses.

ii. Overtly Discriminatory laws

If a woman employee dies while still in service, her pension would go to her family only if the family (children, husband, mother, father) can prove that they are destitute and need the pension or that she was their direct financial provider while alive.

Article 52 of Social Security Law concerning beneficiaries: “In fulfillment of the intent from this law, beneficiaries are those family members of the insured...who fit the following [categories]: a. His widow; b. His children and those of his brothers and sisters whom he supports; c. His widowed and divorced daughters; d. The husband of the deceased insured [woman].”¹⁷

This law equalized widower and widow of deceased employees but places them in two separate categories because the actual treatment of each differs. While a widow and dependents of a deceased employed male need only prove their relationship to him and that he is deceased, the requirements for the family of a deceased woman employee make it almost prohibitive for them to receive any of the retirement due her by law. It must be remembered that the employee paid for this privilege through monthly deductions from her salary and that contributions by her employee were part of the contract according to which she agreed to perform the duties assigned to her. Therefore, social security benefits are not a “grant” from the government which administers the service.

Article 56 of Social Security Laws, titled “Conditions for paying retirement pension to the husband” states: “It is a condition for the husband to receive the pension due him because of his deceased insured wife, that he be completely incapacitated, that he have no private income equal to the amount of pension due

¹⁷ Majmu`at al-Tashri`at al-`umaliya, p.. 122.

him [from social security]...if that income is less than what he is due, then he is to be paid the difference and the rest is to be divided among the other beneficiaries.”¹⁸

Add to the above the fact that only those who have no one to support them are deserving of the pension of a deceased insured woman. Article 34 of Jordan's Labor law for 1996 states: "...if [a woman employee who has gained a pension] dies, her pension is transferred to her to her beneficiaries according to this law if their need is proven and if it was also proven that the employee was directly responsible for their support." This means that unless her family can prove that they have no one to support them, they would not receive her pension. Also given the fact that the woman's family hardly ever receives her pension if she dies, there is no reason for a woman to continue until her age of retirement. These laws are very serious and are at the heart of the perception of women as peripheral to the workplace, limits their promotion, and reduces their incentive to remain employed.

iii. Forced Retirement:

Article 15 of Jordan's Labor Laws reads: "The Ministerial Council can decide to retire an employee if he has completed 20 years of work and the woman employee if she has completed 15 years of work." This is further emphasized in Article 17: "Keeping in consideration Article 26 of this law, he is considered retired by decree any employee whose service is terminated without resignation or by losing his job if he completed 20 years and the woman employee if she has completed 15 years..."

iv. Polygamy and Pension:

The finer details regarding who deserves pension and the percentages due various members of the family regarding pension from a deceased provider, show another form of discrimination that is directly connected with personal status laws. This involves wives of deceased employees. It does not apply to a man receiving his own pension or who is beneficiary of his wife's pension. The tables explaining benefits to various beneficiaries of pensions published by the Lawyers' Syndicate show that while percentages due to spouses may differ depending on whether the parents of the deceased insured employee are still alive or not, that in all cases the wives share the same portion that one single wife would have received had the husband not been a polygamist.¹⁹ This means that when a husband has more than one wife the result is that on his death, the pension that should have been due one wife is divided among two to four as the case may be. The same goes for the children. The more wives the more children and the lesser the amount that each child would receive. Given the fact that social security benefits are pegged to a

¹⁸ Ibid., p.124.

¹⁹ Majumu`at al-Tashri`at al-`umaliya, p. 152.

minimum standard of living and that increases only when the amounts received are not adequate to meet the minimum needs of life, it is obvious that subdividing pensions among wives can only be a source of hardship and harm.

As a way of not encouraging polygamy and to make sure that widows receive a pension that would allow them a respectful life without having to fall back on charity, husbands who take a second wife should be asked to contribute more of their salaries into the social security fund. Whether the employers are to contribute as well or the husbands would have to carry the employer's share can be discussed. But this would be fair for wives who had no say in their husband's taking a second wife. An alternative to this is for the first wife alone to be the beneficiary and except if it is she who demands divorce and depending on how long she has lived with him, her benefits are not cut off because of his repudiation/unilaterally divorcing her. A second wife could then only be covered by social security if the first wife is deceased or if the husband adds to his contribution to the social security fund. This would discourage second marriages and unilateral divorce for no fault of the wife. It would also discourage women from marrying a man with an already existing wife. As important, it would recognize the participation of a wife as home-maker and partner in the Jordanian home. Ironically, the home may emphasize family and defines a wife's job as in the home, but this is not reflected in the laws regarding such matters as benefits which sees a wife as an individual.

D. Missing laws:

Constitute a hindrance for women discouraging them from entering the job market and an effective push factor for women to leave the job market. Jordanian labor laws are inadequate in these areas. Here some of the laws are implicit, i.e. they don't exist and are not taken into consideration while others are very explicit and even though they may not be directly intended toward women, they nevertheless harm women because they happen to constitute a large percentage of those employed in such sectors:

Explicit laws:

According to Article 3 of labor laws for 1966: "Keeping in mind rules set out in item G of Article 12 of this law [amended by Article 2 of regulatory law 12 for 1977]²⁰, this law is to be applied to all workers and owners of business with the exception of:

- Public employees and municipal employees.
- Members of owner's family who work in his projects without receiving pay.

²⁰ First published in the Official Gazzette number 4192, issued 16/4/1977. Majmu`at al-Tashri`at al-`umaliya (Amman: Niqabat al-Muhamin, 1997), p. 6.

- Domestic labor (servants), gardeners, cooks, and those in the same capacity.
- Agriculture labor except for those specifically included by the council of ministers/cabinet.”

These unregulated jobs are performed by both men and women. But women constitute a significant majority among domestic labor and those in the same capacity. Furthermore, women constitute a significant portion of agriculture labor and they do so as part of family activity. Here gender ties based on personal status laws (to be discussed later) act to deny women the possibility of independent wealth even though ownership of property is a guarantee for women in Jordan as it is in all Islamic countries. Furthermore, although most civil servants are men, most women who take up white-collar jobs happen to work for the government.

It is *`urf* which guides the fact that members of a family working for a family business do not get paid for their labor. But here it is the women who end up with nothing since the family business is usually owned by males and inherited by them. A woman who does not “tow the line” would find herself outside the family business with no supporter. Jordanian laws do take the “family business” into consideration and legislates for it. The problem is that such legislature is not enforced and put into action. Section 1061 of the Jordan Civil Code states, “The members of the same family who have common work or interest may agree in writing to create a family ownership and this ownership shall consist either of an estate to which they succeeded and agree to subject it in all or in part to a family ownership, or of any other property owned by them and they agree to include it in the said ownership.”

Since the cabinet has the ability to extend regulations to groups, this would be a simple matter of extending the protection of the law through executive actions.

A good case can be made here because of the declared intention from labor laws:

- A method of balancing the rights and duties of the worker with those of his employee.
- To guarantee that workers receive fair wages for their work which is seen as a social necessity to assure an acceptable standard of living for Jordanians.
- To assure a healthy work environment that guarantees the health and welfare of Jordan’s people.

- Labor laws constitute an encouragement for people to enter the job market. This provides labor and an increase in productivity. An increase in productivity means a greater financial ability to purchase goods, which in turn stimulates the economy.

No Explicit law forbidding discrimination: There is no explicit law that forbids discrimination against women in job opportunities or in the work-place. Yet Jordan is signatory to international agreements that make equality between women and men explicit.

Minimum wages: Jordan's Labor Laws do not stress equal salaries for men and women who hold the same or equal jobs. There is also no law establishing minimum wages. Since women generally hold the least paid jobs and are usually paid less than their male counterparts performing the same job, the lack of such a law clearly works against women. It is estimated that women are paid on average 20% less than men and only receive higher pay in low paying jobs in the service sector or as clerks.²¹

Sexual harassment: From the legal record I have seen, like other countries, sexual harassment does exist in the workplace in Jordan if presented differently. Records of the Hot Line of the *Itihad al-Mar'a al-Urduniyya* shows that sexual crimes including sexual harassment in the work place constitute 5% of the complaints brought to their attention by women who ask for legal assistance. The *Itihad's* findings indicate that sexual harassment occurs frequently in offices and companies, and that the frequency is particularly high in offices where there is a boss and a secretary. A case handled by the Tamyiz court proves the findings of the *Itihad*. In this case a male employee took the opportunity of finding a secretary alone fondled her and would have done more had she not started screaming. In this case he was a much older man and was her superior. Unlike most women who suffer sexual harassment in silence the world over, she brought charges against him and proved her case. Unfortunately the punishment he received was 3 months in prison and expenses. She got no compensation and probably suffered consequences that the case did not report.²²

While women employees in Jordan and other Islamic countries speak of the continuous harassment they face, it is only when such a physical attack on their person occurs that they bring charges. Constant harassment in the form of flirtation and demands that the female employee "go out on a date", or as in another court case, demands that "she marry him", is a daily affair. No laws exist in Jordan to

²¹ Jordanian Women's Guide, p. 23.

²² Tamyiz Jaza', 593/95, published in Majallat Niqabat al-Muhammin, volume IV, 1997, pp 1607-1610.

stop a constant crime which can easily be placed under the title of “*hatk `ird*”, i.e. offending modesty. Women, however, find it difficult to raise such issues because it may cause their families to force them to stop working out of fear. It is strange that such matters can continue in Jordan where protection of women is so important and social conservatism frowns on any such actions.

Glass Ceiling: Even though Jordanian laws guarantee equality of promotion on the basis of educational level, training, or capability, only a few women reach higher levels in either public or private sector and men get promoted much faster.

Suggestions: According to Jordan’s Labor Law, Article 69, it is the Minister of Justice, after consultation with the pertinent official departments, who determines:

- The trades and work that forbid the employment of women.
- The hours during which women are not permitted to work and the situations in which an exception to the rule may be applied.

This means that changing these rules depends on executive action and do not require passage of laws. Here I am not suggesting that women be forced to work in all jobs and all times, rather that the option be open to them to do so especially given the financial incentives. Defining job opportunity based on gender and using the state’s power to enforce employment-discrimination gives an absolutist philosophy to the whole system defining areas of work in which women could not trespass. Since the laws recognize the importance of women to the economy by allowing for exceptions when they are needed, this tends to contradict the division of labor forced on women when they are not needed. Such rules and regulations which obviously favor male employees need to be reconsidered.

Part IV: PERSONAL STATUS LAW

Positive Gains for Jordanian women

Jordan is advanced in certain areas of personal status law. For example the law allows a wife to include conditions in her marriage contract that protect her during her marriage. As long as these conditions do not contradict with the Islamic *Shari`a*, they are recognized by the courts as part of the contract. Breaking such conditions by either party would then constitute a breach of contract. Because husbands have an absolute right to divorce their wives, adding conditions to guide a marriage is a benefit very specific to women and has historically been very widely used by them to assure access to divorce if the wife chooses without loss of financial rights, for ensuring financial support, and most importantly to limit the husband's rights to take another wife. Unfortunately, while other countries refuse to allow women such conditions and others limit these conditions and Jordan is unique in allowing women to include conditions, this advantage is rarely made use of by women. This is due to ignorance of the law and to social pressures.

Shari`a Courts in Contemporary Jordan

Jordan's modern *Shari`a* courts were created by law number 41 for 1951 replaced by law 19 for 1972.²³ The head of the *Shari`a* court system is the qadi *al-quda* (Chief *Shari`a* Justice) and the courts are formed of first instance courts in various parts of the country, each headed by a single *qadi*, and an appeals court headed by three *qadis*, one acting as head. The rulings of the appeals court are final. Among the functions of the *Shari`a* courts pertinent to women and gender are included:

- *Wilaya* and *wisaya* (guardianship).
- Marriage, including the marital contract and all matters involved in marriage.
- Divorce and disputes stemming from marriage.
- The dowry in its different types: cash advanced and delayed and the *tawabi` mahr* (furniture and furnishings expected from the husband according to traditions and agreement).
- *Nafaqa* (financial support) due to the wife and children from her husband during the marriage and after divorce.

²³Amended by law 18 for 1973, 7 for 1978, 25 for 1979 and 25 for 1983.

- Custody of minor children.
- Paternity of children.

Personal Status Laws as Hindrance to Women and Work

Personal status laws constitute the most important hindrance to women owning their own business or being employed. They are at the heart of legal contradictions pertaining to women. These laws control gender and family relations including inheritance and child custody. An amalgam of Islamic and modern laws, these laws are conceptualized as strictly Islamic *Shari`a* law. The laws set up a patriarchal order in which women are considered male dependents and under the constant guardianship of a male. First the father--and, if deceased, the grandfather--and then a husband once she is married. According to the law, all girls' activities must be approved by male guardians. In practice, even a previously unmarried adult woman cannot legally be married without the consent of a male guardian. Since divorce is hard to achieve without a husband's consent, having a career, owning a business, or controlling a salary from a job or an income from a business, may all be the prerogative of the male guardian or husband.

The Jordan Civil Code, Section 43 defines women as having full competence,

Every person who attains full age, enjoys his mental powers and is not interdicted shall have full capacity to exercise his civil rights. 2. The age of majority shall be eighteen full solar years.

Accordingly, women who reach the age of majority and do not suffer from "idiocy or lunacy" (Section 44) are supposed to enjoy full personal freedom and capacity to exercise their civil rights.²⁴ Interestingly the same type of right is extended to marriage so that once a girl has reached the age of eighteen she can ask the judge to marry her to the man of her choice and the guardian would have to present legal reasons to the judge to stop him from performing the marriage.

The impact of personal status laws cannot be undermined in regards to women, work, and participation in public life, the economy, or political system. As a totality, personal status laws confine women within predetermined patriarchal parameters, they give her only limited freedom of choice outside of parental and husbandry approval. In short, with the exception of a few women, even those who enter the labor market or open their own businesses are in fact under the control of husbands.²⁵

²⁴ The Jordan Civil Code, p. 7.

²⁵ In one of the sessions I attended with Mrs. Manal Shamut of the WBPC in which she met with women to answer their questions about personal status laws, one of the women informed the group that her sister's husband sits in her clinic each evening after he returns from his job to

Four laws in particular are of concern. Though separate as laws, they are inter-related and reinforce one another:

- Marriage and the Family.
- *Wilaya* (guardianship).
- *Ta`a* (obedience of wife to her husband).
- Permitting women to work.

count her earnings for the day. The sister is a dentist. This is but one example that illustrates the acceptable sense of control of a husband who has permitted his wife to work in the first place.

A. Marriage and Family

According to Article 2 of Jordan's Personal Status Laws²⁶:

Marriage is a contract between a man and a woman by which she becomes lawful to him with the object of forming a family and producing children.

This definition of marriage first appeared in the 1976 Personal Status Law. No definition existed in the previous Family Law. There are various problems with this law and definition.

- In the division of labor established by this law, it becomes the wife's duty to bear children and keep the family together. Part of her duty is to obey her husband including not leaving the marital home without his permission except when necessary. At the same time it is the husband's responsibility to provide the marital home, the dowry and financial support.
- Even though Personal Status Laws are supposed to be based on the Ottoman and Jordanian Family Laws that preceded them, that is not the case. No definition of marriage appears in the latter. Furthermore, even though it is widely believed that all Muslim countries follow the same philosophy of marriage, that is not the case. Other Muslim countries do not draw connections between the purpose of marriage, forming a family and conceiving children. For example Article 1 of Kuwait's 1984 Personal Status code states: "Marriage is a contract between a man and a woman who is lawfully permitted to him, the aim of which is cohabitation, chastity and national strength." Libya's 1984 marriage laws, Article 2 defines marriage as: "Marriage is a lawful pact which is based on a foundation of love, compassion and tranquillity which makes lawful the relationship between a man and a woman neither of whom is forbidden in marriage to the other." Yet definitions similar to the Jordanian appear in the definition of marriage in the Personal Status Laws of Syria and Egypt. The Syrian definition is "Marriage is a contract between a man and woman to whom she is legal whose purpose is to create common life ties and procreation (*al-zawaj`aqd bayn rajul wa-imra'a tuhil lahu shar'an ghayatihi insha' rabitah lil-haya al-mushtaraka wal-nasl*)".²⁷ The exact same definition of marriage in the Syrian code appears in that of Iraq.²⁸ Algeria's Personal Status laws define marriage in a similar way, "marriage is a contract that takes place between a man and a woman according to the *Shar`*. Of its goals is the formation of a family based on affection, sympathy, cooperation, and morality of the couple and the protection of posterity [*ansab*]."

²⁶ Personal Status Law for 1976, published in the Official Gazette, no. 2668, dated 1-12-1976.

²⁷ Personal Status Law for Syria, Law 59 for 1953 amended by law 34 for 1975.

²⁸ Personal Status Law for Iraq, Law 188 for 1959.

The comparison between the Kuwaiti and Libyan definitions of marriage on the one hand and that of Jordan, Syria, Iraq and Algeria on the other is important. The most important difference has to do with the formation of family and procreation. The

Kuwaiti and Libyan contracts are closer to the Qur'anic definition of marriage than the others. Since neither Kuwait nor Libya were subjected to French or British rule as in the case of the rest, the connection between Western legal codes and culture cannot be minimized.

It is important to understand the origins of these laws and to make these comparisons because Jordan's Personal Status laws are protected and justified on the basis that they are God's laws established through the Holy Qur'an and the Prophet's *Sunna*. It is necessary to deconstruct, compare and locate the origins of these gender laws if there is any hope of changing them.

- In his answers to the questions I put before him, Mr. Ratib al-Zahir agreed that the definition of marriage as it appears in Jordan's Personal Status Laws does not fit with the dictates of the *Shari'a*. He also concluded after studying the issue, that the definition of the law itself is questionable.

i. Questioning the definition of marriage as it appears in Jordan's Personal Status Laws: The wording of marriage contracts does not differentiate the marriage contract from any other type of contract. "a sales contract for example can take place between a man and a woman who is legal to him (*tahil lahu shar'an*).. A rental contract as well could be between a man and a woman who is legal to him."²⁹ Ratib al-Zahir finds the same problems with other marriage contracts that include the same words. More importantly, he regards the definition of marriage as hedging the interpretation given to it by the *fuqaha'* (Islamic theologians). Modern law-givers kept away from the idea that a marriage contract allowed a man to enjoy a woman sexually. Rather they tried to show noble intentions from marriage, with "lofty goals such as building the good society that assured chastity and virtue."³⁰ Put differently, one can conclude that modern marriage is defined according to the historical context presented by the twentieth century with a strong dosage of left-over nineteenth century Victorianism. Seen this way, the philosophical outlook regarding marriage and gender actually have little to do with the *Shari'a* as practiced earlier before the modernization of law and must be seen as a modern state-constructed system that can be changed by the state the same way it was created by the state.

ii. Islamic definition of marriage: "The linguistic meaning of the word *zawaj* (marriage), points to the joining of one thing with another after each was separate on its own. The word then became known by its association with the act of joining a man with a woman in particular so that the word when pronounced came to have

²⁹ See Glossary no. 1, pp. 9-10.

³⁰ *Ibid.*, p. 11.

only that one meaning. In *fiqh*, marriage was defined by the *fuqaha* in many ways, similar to one another, all of which revolved around its purpose and that giving the right to the man to enjoy a woman....[Furthermore], according to contemporary Hanafi theologians—for example Sheikh Mustafa al-Zarqa—marriage is defined as a contract between a man and a woman whose purpose is to legalize sexual enjoyment between them with the purpose of procreation and formation of a family.” Here al-Zahir points out that there is a mixup between the purpose from the marriage, i.e. sexual enjoyment, and the results of the marriage, i.e. procreation. He also points out that marriage cannot be between a man and woman who is legal to him for the purpose of procreation, because she is not legal to him until she is married, and it is the contract that makes this possible. One can conclude from this that, linguistically the definition of the contract is faulty and as it stands it is but a construct emphasizing the possible results of the marriage, i.e. family and procreation, as seen by state legislators, rather than the purpose of marriage.

- iii. Marriage as Contract:** Marriage is a contract in Islam and is not a religious act. In fact, the real marriage contract does not even need to be written down as long as it meets specific requirements that legalize contracts. Here are included an exchange of vows (“*ijab wa qubul*”) and the presence of two witnesses. One should include publicizing the marriage as a requirement according to the *fuqaha*. The role of a religious official was not necessary, for as al-Zahir puts it:

The marriage contract must be considered a purely civil affair like all other contracts which are transacted and whose results are based on the agreement of the two contracting parties in the presence of witnesses, its occasion not being dependent on a religious authority since in the Islamic *Shari`a* there is no class of clergy who have a religious power that others do not have from among common Muslims and no intercession between people and their God [exists in Islam], even the Prophet Muhammad (pbh) did not have that kind of religious power by which he would decide the fate of people vis-a-vis God. (Glossary 2, p. 12).

Comments: The marriage contract then becomes a contract like any other entered into by two people who indicate the conditions upon which they agree to marry. When these conditions cease to exist or if either party breaks them, then the contract ends. It is then a civil contract and not a religious contract even though the permissibility of who can marry whom is defined by Islam which sets rules as to categories that are illegal in marriage like as most legal codes do. For example, cousins can be married but not siblings, a man cannot marry two sisters at the same time and a son can never marry a woman previously married to his father and vice versa. But the act of marriage itself is contractual and is by no means a religious act. Yet the modern state has given marriage a religious nature through its division of the court systems and its assigning family questions to *Shari`a* courts and the family affairs of non-Muslims to their various religious denominations.

Once marriage is put into the realm of the religious it gains a super-conservatism that is hard to budge.

The significance of this discussion is that it deconstructs what we have come to accept as *Shari`a* law in most Islamic countries today. As explained earlier, the fact that Personal Status Laws are understood to be *Shari`a* laws has meant an inability to fight them. The above discussion of marriage shows that the definition of marriage and the philosophy behind marital laws in Jordan today are actually based on historical conditions earlier in this century. Such laws were greatly influenced by Europe's outlook toward gender during the nineteenth and early twentieth century. It is suggested here that given the changing conditions in Jordan and the world order, that this is a time to begin to think seriously of changing outdated laws to fit with contemporary needs in a way that would hold on to fundamentals of the *Shari`a* and traditions as they have evolved and changed, while at the same time taking the needs of Jordan faced with the need to develop and enter the twentieth century.

B. Wilaya (guardianship):

The pertinent laws regarding guardianship in Jordan's Personal Status Law are:

Article 5 Dealing with legal age for marriage: It shall be a requirement for legal capacity for marriage that the betrothed man and woman be of sound mind, that the betrothed man has attained sixteen years of age and that the betrothed woman has attained fifteen years of age.

Article 6 dealing with opposition to Marriage by the guardian:

- A judge may, upon request, give in marriage a virgin who has reached fifteen years of age to a man who is of equal social status and where her guardian, other than her father or grandfather, opposes the marriage without lawful justification.
- If the opposition is on the part of the father or grandfather the claim of the woman shall not be heard unless she has attained eighteen years of age and the opposition is without lawful reason.

Article 7: It is forbidden for a contract to be made with a woman who has not attained eighteen years of age if the man is more than twenty years her senior, unless the judge has ascertained her consent and freedom of choice and that her best interests are served by the contract being concluded.

Article 9: The marriage guardian shall be a male agnate in the order set down in the most appropriate opinion of the *Madhhab* of Abu Hanifa.

Article 13: The consent of the guardian shall not be required for the marriage of a woman who has been previously married (*thayib*), who is of sound mind and who is more than eighteen years old.

Article 22: If a virgin or a woman who has been previously married and who has reached eighteen years of age denies that she has a guardian and marries herself and it is later discovered that she has a guardian then the case shall be examined and if she has married a man of equal status the contract shall be binding even if the dower is less than the proper dower. If she has married a man who is not of equal status then the guardian shall be entitled to apply to the judge requesting dissolution of the marriage.

These laws are problematic in various ways that deal directly with modern needs:

1. Age of Marriage: Fifteen years means that a girl does not have enough time to finish school let alone receive any technical training. Marriage is followed by pregnancy and even though schools allow girls to complete their years in school

(according to the headmistress of one school with a couple of cases), it is a practice frowned upon by the relatives of other girls and most married girls drop out of school. So here we have a big limitation for women ever getting the education or training that would allow them to enter into the job market or any productive sector. This fact has been recognized by Jordanian women organizations and proposals to raise the age of marriage to eighteen have been put before the Jordanian government and turned down on the basis that tribes in particular object since a longer wait to marry could entail moral problems. According to Rihab Qaddumi, new suggestions have been put in front of the government by which the age of marriage could be raised for all of Jordan, but that tribal areas could choose to abide by a different age of marriage.

Comment: The legal age for marriage is already a state-choice and was set at the age of 15 because of modern conditions. The age of marriage according to the Hanafi *madhhab*, the officially recognized law as stated by Article 9, is open. From the archival record we know that marriage contracts for both girls and boys could be signed by their guardians at a very early age but that consummation of the marriage usually only took place when the girl reaches puberty. Age 15 was the age that the *fuqaha'* of the Hanafi *madhhab* recognized as the age of rational maturity, i.e. the time when the young—boys and girls alike—can voice their opinion and are no longer in need of a *waliyy* to control either their marriage/divorce or handling property and business. If the state could establish one legal age for marriage, it could certainly establish another.

2. Consent is the basis of any contract and it is required in marriage. However, consent can and is all the time defined as the silence of the bride. There is no real effort to ascertain that the girl is really willing or is being married under duress. A fifteen year old without any means of support other than what is provided by her family, has little power to stop her marriage if she so wished. An 18 year old, graduated from school or with some training who could be a potential financial asset to her family and who is clearly more mature would have greater respect of family members in regards to choice of spouse or decision to marry. Delaying the legal age of marriage is therefore a must.
3. The right of a father or grandfather to oppose the marriage of the daughter after she has reached the age of legal maturity established at 18 by Jordanian law is strange. This is allowed on the basis of *kafa'a*, meaning that the chosen groom is not her social equal. Social equal has many meanings, but whatever that meaning may be it makes no sense in today's world where there is greater mobility and cultural class lines are becoming more fluid. The real significance of the law lies in the authority that is allowed male relatives over the life of women even after they reach the legal age of full competence, i.e. they continue to be dealt with as lacking civil competence to act on their own behalf just as if they are still children or insane.

4. Regarding *kafa'a*. According to Article 9 of the Personal Status Laws for Jordan, the *Hanafi madhhab* would be the deciding factor in regards to guardians. The *Hanafi maddhab* is generally accepted to be the basis of Personal Status Laws in Jordan and most Islamic countries today. Actually, that is not exactly so and other *madhahib* have provided not only laws but also the spirit of the law in regards to personal status laws. A case in question is Article 13 which is really based on the *Maliki madhhab* rather than on the Hanafis who do not define maturity according to marriage but according to puberty and rationality. It is the Malikis as well as the Shafis who allow a woman to choose her own husband only if she has been previously married and therefore become experienced. In common talk, “she experienced the world” (“*dakhalit dunya.*”)

Comment: The selection of *madhahib* as a source of law has worked out in such a way as to make the system quite patriarchal. The *madhahib* are also applied according to a philosophy of law that demands greater control of the female, i.e. a stricter patriarchy than envisioned by the *fuqaha'* and practiced in pre-modern courts. While the *Hanafi madhhab* allows an adult women to marry herself once she has reached puberty and rationality—certainly reached by the age of 15—Personal Status Law have placed the *qadi* as the instrument through which she can be married, i.e. she cannot marry herself but needs the approval of the judge and she cannot marry a man twenty years older without the approval of a judge. This is not in accordance to the Hanafi school. The father may then complain to the judge and demand the dissolution of the marriage on the basis of incompetence, but that takes place after the marriage and is not a way of stopping the marriage from taking place. The situations presented by pre-modern archival court records and that presented in modern *Shari'a* courts are very different.

Furthermore, while stating the right of a previously married woman to marry herself without a guardian's approval, first she had to have reached 18 years of age and if there is no “opposition...on the part of the father or grandfather... is without lawful reason” as per Article 6. In short, even after a woman has reached maturity and been married before, she can still be stopped from choosing her own spouse by a guardian's statement of “lawful reason” which usually means *kafa'a*, a powerful instrument in the hand of a father.

It should also be noted, that even though *kafa'a* is important and the courts support it, the opposite scenario in which a father marries his daughter to a man does not receive the same reactions from the courts. From what I have seen, marriage outside of class and clan is quite common in Jordan today due to urbanization and social mobility.

5. An important conclusion to be arrived at from this discussion, is that laws have been chosen selectively in a patchwork way to fit together and form a vision of gender in which daughters stay in the custody of male relatives until their marriage. Once married she is placed in the custody of a husband. Even when she divorces

- and is remarried, the laws allow for a continuation and a return of her placement in the custody of her male relatives. Her social and legal competency then is limited. The laws which meant to protect a woman at one time are today laws that keep her confined and limit severely her options. So it is the spirit of law which guides the legal system rather than the need to stick to any particular preordained religious or traditional laws. Without freedom of choice, it is hard to conceptualize women leaving the home after an early marriage and children to go into the work-force when such an act is opposed or controlled by a husband.
6. The logic of the legal system is contradictory. While women are treated as of limited legal and social competence in gender and family relations, they are held responsible and holding full competence in regards to owning and holding property, selling or working, and in front of criminal courts. A woman can be a minister of state, member of parliament or a court, but she cannot transact her own marriage or choose her husband without her guardian's approval. Opening her own business or starting her own enterprise becomes a moot possibility under these conditions. As the next section shows, this system gives the husband the right to forbid his wife from working and places himself in the position to control her income, a fact which in itself makes work less attractive to women.
 7. One of the important justifications for this system of marriage and *wilaya* is that marriage is not between individuals alone but more importantly marriage involves families and that in a society like Jordan's, where family ties are so important, no marriage could be stable without the approval of the families concerned. A husband would therefore have to contend with his wife's family whose responsibility it is to protect her and handle any sort of abuse she might suffer at his hands. The impact of Bedouin tribal law is clear in this matter. Jordanian law overtly takes from the *`urf* (traditions) of Jordan's *`asha'ir*. These laws were standardized and applied throughout the country. This is a very strong case theoretically, however from the court records I have reviewed and from the records of legal consulting groups and Hot Line of the BPWC, it is clear that families no longer can afford to take care of their various members. Property is not held in common anymore as was the case under a tribal system, and the increasing demands of life mean that each person or nuclear family has only enough to cover their own expenses. Divorced wives become truly destitute, therefore these "good intentions" and declarations of social responsibility must be weighed against the realities of what is actually taken place.
 8. The extent of control allowed male relatives is evidenced by the fact that in the case where a woman who is not yet eighteen years old wants to get out of a marriage contract (*khul`*) and her husband accepts, if her guardian says no she has to remain in the marriage. It is only after she reaches the age of 18 that she could

transact her own divorce.³¹ That is how much in control of a male--who could marry her and divorce her—she is.

9. The need for a waliyy differs among Arab and Muslim countries. Each taking the Hanafi *madhhab* in a particular way or combining *madhahib* according to the philosophy of gender. The most loose is perhaps the Iraqi law (188 for 1959) which gave the woman *wilaya* over her own actions as per the Hanafi code requiring only rationality (*`aql*) and puberty (*bulugh*). It is only if either man or woman is under the age of 16 that the *qadi* is required to give the parents a specific period of time during which to approve or refuse the marriage for acceptable reasons. If the reasons are not convincing, then the judge can refuse them and uphold the marriage. Almost the same law applies in Syria (Law 59 for 1953 amended by law 34 for 1975). The only difference is that the husband should be the *kuf* of the bride.

³¹ Shari`a case number 24624 in `Ayyish `Amru, Al-Qararat al-Qada'iya, p. 5.

C. Right to Work

“A woman has the right to work with her husband’s approval.” Jordanian law guarantees women the right to work with spousal approval at the time the marriage is contracted or if the wife was already working at the time the marriage was contracted without the bridegroom specifically forbidding her.

A number of points need to be made about the basis of this law:

1. The *Shari`a* does not discuss the issue of work or the right to work. It does not do so for men and it does not do so for women. In other words there is no prohibition of the work of women according to the various sources of Islamic law, i.e. the Qur’an, Hadith, or *Fiqh*. To the contrary the Qur’an can be said to have taken the work of both men and women for granted in saying “men have a share of what they have earned and women have a share of what if they earned” (“*lil rijal nasib mima iktasabu wa lil-nisa’ nasib miman iktasabna*”). Ratib al-Zahir agrees with me that this is a clear approval of woman’s work. He continues “work is a way of making an income and Islam, which gave justice to women and gave her all the rights that fit with her humanity and pride, would not have stopped her from becoming an effective member in life [or human existence]. She is the sister of man and half of society and has energies of great use and benefit to society ” (Glossary, p. 57).
2. The Jordanian constitution gives the women an absolute right to work and protection of the law in her capacity as worker and on the job. So, the question is why is the right to work attached to a husband’s approval of a wife’s work? The answer is to be found in Personal Status Laws that give the husband the right to control the movement of his wife, i.e. to leave the family home which is attached to her right to financial support from him (*nafaqa*). Simply put, a wife’s obedience *ta`a* is seen to be in return for a husband’s *nafaqa*. When a wife does not obey her husband, she is declared to be disobedient (*nashiz*). As *nashiz*, a wife is considered a shrew, is denied her right to her husband’s financial assistance, and her whole family and especially unmarried sisters are placed in a socially unfavorable situation.
3. What if the husband agrees that his wife could work, does the wife deserve her husband’s financial support when she receives an income from a job or a business she owns? Should she contribute to the family budget? According to the *Shari`a*, a woman’s income is her own and not to be spent on the household which is the husband’s responsibility. Today, with the rising cost of living, such a situation is not even considered, and a working woman or one with income is most certainly expected to share expenses with her husband. In fact, it is quite common today among educated young men just starting out, to look for young women who either have an independent income or hold a job. Young men with whom I discussed this issue voiced deep concern regarding the financial burden expected of a husband before and after

marriage including the dowry, attachments to the dowry (mainly jewelry and house-furnishings), and the family budget. The latter in particular was a point of contention especially in regards to working women who tend to wish to keep their own income. Since husbands consider it their right to allow or forbid their wives from working, they also consider it their right to control the income from that work. Several women who left their jobs because of this reason told me they saw no reason why they should work given the difficulty of transportation, the added burden of family and housework and the fact that they are not left with enough money to buy their own personal needs.

In Jordan like other Middle Eastern countries, marital assets do not belong jointly to husband and wife to be divided between them at the time of divorce. Therefore, women consider their income as belonging solely to them and quite often prefer to stop working altogether rather than turn over their salaries to husbands whose responsibility it is to support them in the first place. Among middle and upper class women a joint family budget seems to be more prevalent, but even here spouses hold their property separately.

D. Nafaqa and Obedience (Ta`a)

The very existence of the law “a woman has the right to work with her husband’s approval” is problematic. Not only for emotional and cultural reasons, but also legally. According to acceptable principles of “*ta`a*” (Article 37 of Personal Status law), a husband has the right to forbid his wife from leaving the family home except for necessities and legitimate reasons. Even though going to work is a legitimate reason once the husband has agreed, the fact that the wife has to be obedient or else lose her right to spousal financial support, i.e. become *nashiz* (disobedient). Besides the loss of *nafaqa*, *nashaz* would stigmatize her whole family and jeopardize other daughters’ chances of contracting good marriages. The stigma attached to *nashaz* in Jordan is evidenced by the rare cases of *nashaz* when compared to other Muslim countries. Besides there is little sympathy for disobedient wives in or out of court especially when charged with neglect of home, husband or children. Yet such cases exist and denial of financial support and *nafaqa* after divorce because of the wife’s work and a husband’s disapproval of it, are frequently brought in front of Jordanian courts. Here a number of issues are important:

- A husband’s right to dictate the work of his wife is supported by Jordanian laws and courts execute such laws.
- Women have always worked: the whole idea that a husband has veto right over his wife’s employment and that this right gives him further rights to control her income or business is not supported by the *Shari`a*. As evidenced by *Shari`a* court records dating from the Ottoman period, women worked at many jobs, they were midwives; directors of *awqaf* (often assigned to that job by *qadis* of *Shari`a* courts); they owned and ran coffee houses and were heads of women’s guilds for such crafts as weaving and pottery. Women also worked in agriculture and in fact constituted a big chunk of agricultural labor and of moving (*tarahil*) agricultural labor after intensive cash crop production was introduced to the Middle East in the nineteenth century. They sold and bought in the market-place, had their own spots assigned to them and went to court to dispute any infractions on their spot or their right to it. Women held *iltizams*, both urban and rural and acted as court assigned expert witnesses sent out by the *qadi*. Finally, we do not see cases brought to court in which a man disputed his wife’s right to work, divorced her because she worked, or asked the judge to stop her from working. The point is that it was common practice for women to work with the exception of those who could afford not to.
- Question debatable: The *fuqaha’* have differed about the connection between *nafaqa* and *ta`a* and the right of a husband to forbid his wife from working. According to Ratib al-Zahir:

According to the Hanafi *fiqh*...if a woman was to rent herself out to breast feed a child without permission and without leaving her home, then she is not *nashiz*.... in al-Bahr al-Ra’iq of Ibn Nujayyim, if a wife is a midwife or

she had some thing [of hers] with another, then she can go out with permission or without permission. Then the *fuqaha*' disagreed as to whether a professional [i.e. a working] woman deserved a *nafaqa*, some said that if a husband disagreed with his wife's work and she insisted on working, then she deserved no *nafaqa*. If he permitted her to work, then she deserves a *nafaqa*. Others have insisted that her work with or without her husband's approval does not deny her the right to a *nafaqa* because a wife may need to work and be involved in her own concerns and that should not invalidate her right to *nafaqa*. It is the second interpretation of the *fuqaha*' that has been applied in Jordanian Personal Status laws. The exact words were actually copied from the Syrian Personal Status laws, Article 73 which states "A woman who works without her husband's approval loses her right to a *nafaqa*." The meaning of the law has been expanded somewhat to allow for explicit and implicit agreements such as including a written agreement in the marital contract or considering the husband as agreeing if he married her when she was already holding a job (Glossary, p. 59).

- Confining a woman's movement because of a husband's legal right whatever the logic or justification, actually denies her basic human rights, in this case freedom of movement.

E. Divorce

According to the *Shari`a*, men have unconditional rights to divorce. This right was confirmed by personal status laws. At the same time, the ability of women to get out of a marriage became more confined than it had been in legal practice before the modernization of law. As court records from the Ottoman period illustrate, women were able to negotiate their marriage and divorce in various ways. Holding the *`isma* (marriage knot) which gives the wife the right to divorce herself, and adding conditions to marriage contracts are the most important ways to control a marriage, and even though Jordanian law allows women to add such conditions, this hardly takes place because:

- 1) Society discourages them from asking for the *`isma* and consider a husband who does so to be weak.
- 2) Most people do not know that even if the wife holds the *`isma* this in no way denies the husband the right to divorce. There is general ignorance about this issue.
- 3) Women are not informed about the right to include conditions.
- 4) conditions have to fit with what is considered Islamic and are therefore in need of being made more explicit.

Glossary 4 of this report contains translation of a couple of marriage contracts from the early Islamic period which illustrate the maneuverability that women had in regards to assuring themselves of a marriage that fits with their needs. When the husband breaks these conditions, the wife can have the judge divorce her or can renegotiate the contract on a new basis.

For a woman to receive a divorce in Jordan today she has to go through a process of *shiqas and niza`* in court in which the wife must prove that there are such severe problems between her and her husband as to warrant the divorce. A husband can bring a *shiqaq and niz`* case as well in an effort at divorcing her without having to pay her full financial rights (i.e. alimony, *`ida* alimony, *mu'akhkhar* dowry). Invariably what is at stake is the wife's financial rights. She is expected to compensate her husband for the divorce unless she can prove that there are legal basis for such a divorce.

The law is very specific about the reasons allowing the *qadi* to grant a wife divorce. For example, a divorce is allowed a wife if she can prove that her husband is impotent, that his condition is incurable, and that she never agreed to live with him after knowing that he is impotent. This is in accordance with the Hanafi *madhhab*. Otherwise it becomes a *shiqaq and niza`* case.

In *shiqaq and niza`* cases the judge chooses two arbitrators that could be--but not always are—from the couple's families. The arbitrators' first objective would be to save the marriage and report back the judge. If they succeed, all is settled. If not, then they have to

report back as to whose fault it is and give percentages to determine the financial rights that would be due to the wife taking into consideration the husband's financial ability. In short, what is at stake is the wife's financial rights due her from her husband as per *Shari`a* and the marriage contract between them established.

Add to that the delay in procedures. The court is very often dissatisfied with the results of its own arbitrators, often calls upon a third to join them and may also disagree with the findings of the third due to the disparity between arbitrators. Also add the fact that the husband almost always appeals decisions when they work against him causing further delay. All while the wife has no financial support and is under pressure to stay with a man she wants to divorce. The inequality in regards to divorce is therefore clear and is a major cause for women's suffering today.

Comment: Put together these personal status laws create a patriarchal order that places the burden of family and home on the shoulders of women. Women may work, but their primary function is seen as belonging in the home. She may be a lawyer or judge but is expected to cook, clean and raise the children just as though she did not work. Even though the husband helps, it is seen as voluntary on his part and not his duty. If marital disputes reach court (usually in cases of *shiqaq wa niza`* which are very often relegated to arbitration), the wife's employment works against her because she is not paying sufficient attention to her home and children. Given the push factor in labor laws, the glass ceiling, low pay and incentives to leave the job, working becomes less attractive except for poorer women who cannot afford not to work.

Part V: IMPLICATIONS, OBSERVATIONS AND SUGGESTIONS

Regarding a husband's veto right on his wife's work

Personal Status Law gives the impression that once the husband has acquiesced in regards to his wife's work, he can no longer deny her. Actually the situation is much more complicated and this law in particular must be considered one of the most important hindrances to the entry of women into the work force or of opening their own business since her continuation in either is dependent on "keeping her husband happy."

The problems here are diverse. A man could refuse to pay his wife any financial support on the basis that he asked her to quit working and she refused and continued to work (Tamyiz Court 41157 dated 3/9/1996). A husband could also deny his divorcee her rightful financial compensations due her because of his divorcing her on the basis that she worked without his permission. When the wife sues for these financial rights which are often agreed upon at the time the marital contract was signed, the court asks her to prove that she had received his approval that she could work. Since such approval is almost always an oral agreement, it becomes very hard to prove (Tamyiz Court case 20876 dated June 1979).

Since Jordanian marriage contracts allow for the inclusion of conditions (a unique situations that is of potentially great benefit to Jordanian women which they hardly ever take advantage of) women should be advised to insist on the inclusion of such oral agreements in the written contract particularly since Jordanian `urf (a basis for law in Jordan) accepts the idea that a husband has a right to allow or refuse his wife the right to leave the home or to work.

One would imagine that there would be a discrepancy in the treatment by courts of wives based on the job they held. For example, an interesting case (Tamyiz Court 248/92) took as a basis for its decision the fact that the wife worked in the armed forces and would not be able to resign. Here the husband moved his wife to an area to live outside of Amman where she had lived continuously for a long time. In a *ta`a* case he demanded that his wife move there with him. As the records state, the wife worked in the armed forces before her marriage, since she continued to work after being married to him, it is clear that he must have approved her work. Yet the court did not dispute the husband's right to demand that his wife quit and come live with him, rather it asked that he prove that the new home he set up was acceptable as per *Shari`a* requirements and also indicated that the wife worked in the armed forces and did not have the right to resign if she wished to do so. So the husband's acceptance of a wife's work did not mean that he could not change his mind later and it was the wife's inability to resign rather than her husband's right to demand that she do so, the was of concern to the court.

Women in other professions considered quite respectable in Jordan also face the same kind of marital control. A number of cases (I was able to read only in summary unfortunately) indicated that teachers often faced being declared *nashiz* because they refused to give up their jobs on their husband's demand. *Nashiz* is a condition in which a wife is considered disobedient and not deserving financial support from her husband. Being declared *nashiz* did not mean that a wife would be granted divorce by her husband, he could keep her in that state indefinitely if he so wished unless she took the case in front of the judge and went through the expenses and hassle of *shiqaq wa niza`* as discussed elsewhere in this report. In Tamyiz Court case 21332 dated 12/4/1980, the wife, a teacher, was asked to prove that her husband approved that she worked. Given her education and the fact that she was already in the profession, logic should have indicated that the husband must have married her knowing that she had a profession. He is the one denying her rights and he should be the one asked to prove that he never approved of her work. That however is not the situation in any of the cases surveyed, the onus of proof was laid on the shoulders of the wife notwithstanding the acknowledged *`urf* that including written conditions in the marriage contract at the time the marriage is contracted is not acceptable socially and is certainly not acceptable to husbands who could be considered wimps if they succumb to their wives' conditions. So according to *`urf* such conditions are always oral and the courts should be well aware of that. Obvious evidence, like the wife's education and profession, do not seem to make a difference in the court's decisions.

Shiqas wa niza', court procedures and judge's logic

Article 225 of the Jordanian Civil Code states:

What is traditionally known/accepted is like what is laid out as a condition in a contract.

As example of what this means, Article 226 involving trade contracts states:

What is known/acceptable between merchants is like/equal to conditions [to the contract] between them.

At the same time, the law recognizes the fact that men have power over women in actual life and that this power is coercive and can cause enough fear to make women do what the husband wishes even against her will. Section 142 of the Civil Code states:

The husband has authority over his wife and if he obliges her by beating or for example precludes her from her kin in order to have her forfeit any of her rights or grant him property and she does, her disposition shall not be effective.³²

³² The Jordan Civil Code, p. 21.

While this ability to coerce is taken into consideration when it comes to contracts involving property disposed of by the wife under duress from the husband, the same logic is not applied to situations in which the wife asks to be separated from her husband because of intimidation or physical abuse without losing all her financial rights in the only avenue open to her, i.e. through a *shiqaq and niza`* (family quarrels and feuds). Moreover, in *shiqaq wa niza`*, the onus of proof is on her shoulders and even then arbitrators in such courts that usually represent her and her husband, almost always end up by advising the court to reduce her financial rights due her from her husband such as *nafaqa* or compensation.

The recognition of Jordan's Civil Code that women could be coerced by husbands is a rather important instrument that can be used to support women yet the opposite almost always happens. When a wife complains to the court of being abused or coerced into actions that she cannot approve of, for example accepting that her husband's mother live with them, she has to present concrete evidence to her allegations or the court does not accept them. For example, it is well known that mothers-in-law are not exactly accommodating to wives and can make their lives miserable. In Jordan, quite often mothers live with their sons and become a source of friction. Sharia requirements both by law and acceptable by Islamic *`urf*, is that the marital home should be exclusive to the couple unless the wife approves. Court records from before and after the modernization of law throughout the Islamic world show that this fact is not disputable and quite often a wife who sues for separation from her husband because he is not providing her with a proper home receives the separation or he is asked to house her in a separate home. Reading court cases (only the summaries were made available to me), extensive reports in the records of the Business and Professional Women's Club, discussions with women at lecture sessions I attended with lawyers of BPWC, show that one of the most important reasons for family disputes involves the mother-in-law's presence in the family home. When the matter reaches court and notwithstanding the traditional and usual relations presented by this situation, the case becomes a "family dispute" *shiqaq wa-niza`*, the solution to which involves a compromise in the wife's financial rights.

A different approach by the judge, taking the Civil Code's Article 224 in a fair light would in fact help give leverage to women. This is but an example.

I would like to add that a new personal status law is being debated in Egypt that has taken a very serious look at divorce. The law has already received the acceptance of the Majlis al-Buhuth al-Islamiyya and a nod from the Azhar. An item of this law allows women to go before the judge and ask for a *khul`* divorce and forbids the husband from stopping her. The compensation she would pay would be no more than the *mu'akhkhar* of the dowry that she would have received at the time of his death or if he were to divorce her. This new law is based on *Shari`a* and *fiqh* and is according to practices in courts before the introduction of modern law. As Ottoman archives have shown a *qadi* never refused a woman's demand to be divorced from her husband, that her right to *khul`* was guaranteed and the compensation hardly ever went beyond her *mu'akhkhar*. The use of archival records have been instrumental in proposing new laws in the Egyptian situation.

Another law that is being discussed in Egypt in regards to divorce has to do with the demand that the husband be forced to wait a one month period and go through the process of arbitration as the wife does when she wants to divorce. In Jordan, as in Egypt, arbitration is only allowed in case the wife asks for divorce. In Jordan, arbitration is also allowed when the husband brings a *shiqaq and niza`* case against his wife. However, in the latter the end is not to pay her financial compensation, a husband still has an absolute right to divorce his wife whenever and wherever he so wished without the interference of anyone. The basis of the new proposed law in Egypt is the Qur'an 4:35 "If you fear a breach between them, appoint two arbitrators, one from his family and the other from hers. If they wish for peace, Allah will cause their reconciliation. For Allah has full knowledge, and is acquainted with all things."³³ These words do not differentiate by gender demanding that arbiters be assigned only in case the wife demands divorce. Rather the Qur'an reads that if there is no reconciliation and the two agree, then divorce should take place. If there is a possibility of reconciliation, then arbiters can be assigned to try and bring them together. Nowhere is the man privileged nor the wife's financial rights left open to the arbitrators and the judge to decide.

Contradictions regarding *Maslaha* and *Shiqaq* and *Niza`*

As pointed out earlier, Jordanian various codes contradict each other in regards to gender laws. Different presumptions are used to justify laws in different codes. Some are more obvious than others.

For example, the Jordanian Civil Code is the final arbiter when it comes to disputes between various legal codes: Section 11 of the Civil Code for Jordan states

The Jordan law shall be the reference in regulating relationships when their nature is required to be determined in a case where there is conflict of laws in order to ascertain the applicable law among them.³⁴

Interestingly, Section 62 declares itself against harm in the law:

Injury does not justify injury and damage shall be abated.³⁵ ("*la darar wa la darar wal-darar yuzal*"³⁶).

Given these two articles one would imagine that the important principle of comparative advantage (based on the Islamic principle of *maslaha*) would apply here.³⁷ But that is not what happens in court, comparative advantage is not applied

³³ Holy Qur'an, 4:35.

³⁴ The Jordan Civil Code, translated by Hisham R. Hashem (Amman: al-Tawfiq Printing Press, 1990), p. 2.

³⁵ Ibid., p. 9.

³⁶ Al-Qanun al-Madani al-Urduni (Amman: Niqabat l-Muhamin, 1994), p. 19.

³⁷ A good example of how comparative advantage is applied is in regards to the right to construct a window in a wall of a house which overlooks the house of another. Such a window would allow fresh air and sunshine

in situations even when it involves harm to the wife. Thus the *qadi* does not take into consideration the harm to a wife when compared to the advantages of a husband who wishes her to remain married to him or who refuses her wish to take a job, etc. Rather than divorce a wife whose husband wishes to remain married to him on the basis of comparative advantage, the *qadi* usually looks at the good of the community, i.e. applies *`urf* which accepts absolute rights of the husband over his wife. If the wife sues and insists on separation, it becomes a case of “family dispute” (*shiqaaq wa niza`*) and certain steps are taken that ultimately lead to disadvantaging the wife and harming her through the loss of part or all of her financial rights including support and alimony. In certain cases when a wife wants a divorce badly, she is forced to relinquish child support expected from her husband to support his children living with her to “buy” her divorce.³⁸

The procedure used in “family dispute” cases are based on the Qur’an which frowns on divorce and requires that two reliable people, one from the husband’s kin and the other from the wife’s kin, be assigned the job of reconciling the couple. If they fail to do so they had to indicate whose fault it was that the marriage was failing. This decision is important in allocating the financial rights due the wife from the husband. So what is at stake is not a determination of how much alimony she would receive as in the case of American courts, actually what is being determined is how much to take away from the already established obligations due to the wife from her husband since the time that their marriage contract was signed. What is at stake is the delayed dowry which is due to a wife at the time of the husband’s death or divorce, a one-year alimony, and support during a three-month *`idda* period in which she is not allowed to remarry until it is determined that she is not pregnant. Depending on the status of the marriage, gifts the husband gave her could also be in issue. So the wife has a lot at stake while the husband could only gain from this type of arbitration. In effect, a wife who does not wish to stay in a marriage has to buy her way out of it and is left harmed by the procedures and quite often destitute. Undoubtedly, this is not a situation where she could be economically productive.

A number of issues are not taken into consideration in these arbitration procedures. The most important is the fact that the husband continues to have an absolute and unquestionable right to divorce his wife at any time and without any specific reasons. So arbitration in no way touches him. Yet the Qur’anic basis of arbitration pointed above does not indicate that it is to be applied in the case the wife wishes to divorce alone, rather it talks about stopping divorce which is considered the legal act least loved by God. Since divorce is considered the sole prerogative of men, one would assume that the arbitration system should in fact be applied in case the man wished to divorce. But that is not the case and it is only when the wife asks the judge to divorce her (*tatliq*) that arbitration is used. Since wives wishing to divorce usually remain adamant while

to the house honor but would deny the neighbor his privacy and could expose his women-folk to the eyes of strangers. Here the judge would have to decide if the benefits of the homeowner outweigh the disadvantages to the neighbor and reach his decision accordingly.

³⁸ See Shari’a court case number 10902 in Sheikh `Abdel Fattah `Ayyish `Ashur, Al-Qararat al-Qada’iyya fil Ahwal al-Shakhsiya Hata `am 1990 (Amman: Dar Yaman, 1990), p. 4.

the husband can afford to be patient since his right to divorce at any time exists, “family dispute” cases always end up harming wives who prefer to lose all rather than remain with husbands who are abusive, who took second wives or other situations.

Procedural Problems

As the system stands, women are defined and dealt with as dependents. Financially this means that unless a woman has some wealth of her own she is dependent on a father or husband for financial support. Since salary scales of most employed women in Jordan are low, even working women depend on a male to financially support them. Because of this, one would imagine that in legal disputes the system would ensure that women would receive what support is due them in as expedient a way as possible. That is not the case according to lawyers interviewed, women who have had to deal with the system in regards to their *nafaqa*, as well as to court records.

Here the problems are both bureaucratic and legal. On the bureaucratic side, a woman whom the courts have awarded financial settlements in court cases, usually have to return to court many times before the paper work is finalized and they can receive what is due them. Meanwhile, a divorced mother would have to find the means for transportation to and from the court, and money to feed her children, pay the rent and support herself. At one time the wife's family could have helped, but from the BPWC records I studied, that does not seem to be as feasible because of the death of her parents, or inability of her family to support her. The situation therefore is one in which a divorced woman faces real hardship caught between financial needs, the court system, and often an abusive ex-husband.

There are many situations in which court procedures delay payment of the wife's financial rights according to cases from Jordanian courts. For example, a wife sues her husband for divorce. The court assigns two conciliators to try and end the dispute between the couple. Conciliators are chosen on the basis of closeness to the couple, one from her family and one from his. The judge could assign his own when family members are not available. If the arbitrators fail to reach a decision, the judge can assign a third. The conciliators try to end the dispute, then they try to settle the matter out of court, and finally they bring their findings back to court. If they recommend divorce they also recommend the amount of *nafaqa* that the husband should pay his wife based on his financial ability. The judge then makes his decision based on these findings. Very often, because of the relationship of the conciliators to husband and wife, there is a great discrepancy between the suggested amounts. In a 1996 case the Ibtidai Court awarded the wife a *nafaqa* based on the findings of the arbitrators it assigned. The husband appealed the decision. The court of appeals concluded that there was a great discrepancy between the amount of *nafaqa* suggested by the arbitrators, two of whom suggested 500 dinars as sufficient alimony to cover the wife's expenses and estimated that the husband could easily afford this amount. A third arbitrator estimated that 40-50 dinars alimony suffices to cover the wife's expenses and that the husband could not afford more. The appeals court decided that the two estimates were far apart and asked that the arbitrators to present details supporting their

conclusions. Meanwhile the court's Ibtidai court decision awarding the wife *nafaqa* (decision 40971 dated 27/7/1996) was nullified until further deliberation (decision number 17743).³⁹

From what I was told by women lawyers who deal with these problems on a daily basis, this type of case is not unique but is exemplary of the type of frustrations women who sue for divorce face all the time. It was quite common that the judge approved a husband's request to reduce his divorcee's *nafaqa* after she was awarded what the legal procedure decided was due to her (case 41006 dated 31/7/1996). The system is set and run in a fashion that discourages women from asking for financial rights and very often after fighting a long battle, wives simply agree to accept whatever a husband wishes to give them and withdraw their cases. The records of PBWC and the lawyers working there confirmed this and discussed many cases in which a wife either chose to conciliate with the husband even after the court awarded them *nafaqa*, or accepted whatever settlement was offered rather than go without any support at all.

A further point that needs to be pointed out is that most court decisions awarding *nafaqa* involve very small amounts that can hardly pay rent let alone cover the expenses of children. A rough figure would be 40 to 50 dinars a month for a mother with two children. This is based on cases recorded by the PBWC's Hot-Line and legal files. As one wife after the other complained, the amount is not enough to cover a fraction of her expenses and the expenses of her children and in many cases the husband must have been able to pay more since they often took another wife or bought a car or owned their own businesses. The ability to finance court cases is a heavy burden particularly when one is destitute and many of these women are.

Ratib al-Zahir points to *Shari'a* Courts as constituting a point of hardship and dilemma for women and points out that they need to be made more efficient and their procedures homogenized and streamlined:

These laws have now been in effect for 40 years, and there is a real need for change to insure a fast and fair judicial system especially in regards to the delivery of legal notifications which take too long by the time to pass through existing legal procedures...the law did not take into consideration time needed [for preparation] or for delay, which leads to big differences between procedures followed from one court to the other and one judge to the other. Therefore a time period for delay must be established especially since a lot of the cases brought in front of Sharia courts need expedition because of the sensitivity of the case like *nafaqa*, child custody, and parental visitation. Family matters in particular need to be settled expeditiously so that the problems do not multiply and become more complicated thereby making it more difficult to solve.

As corollary to the above, "giving all cases brought in front of Sharia courts the [automatic] right to appeal lengthens court cases." This becomes a real hardship when it comes to questions of child custody, visitation rights, or *nafaqa*. There is no reason why the decisions of the court of

³⁹ Published I XX , p. 1183.

first degree would not be final in such sensitive cases as child custody of infants, child visitation, or a specific amount of *nafaqa*, etc.” (see Glossary 2)

Regarding the Prerogatives of the Qadi:

The Qadi is expected to apply the law as compiled according to Personal Status Law and according to defined procedures. There are a number of problems with this because even though Jordanian laws stress the freedom of the judiciary, in fact the *qadi* does not use his own prerogatives and applies the law in its narrowest and most conservative sense. The philosophy applied therefore does not allow him to look at what he can see beyond the case being presented to him. For example, as discussed above, the accepted belief documented by law that a woman is under the constraints of a husband and therefore the law allows her to renounce contracts that she later explains she signed when under her spouse's duress. This type of logic is not brought into court because the codes and procedures are applied strictly and because most judges are quite conservative.

Ratib al-Zahir points to another problem regarding the prerogatives of the *qadi*, this having to do with evidence and witnesses.

Methods of evidence in *Shari`a* court procedures are in need of review. In determining the evidence regarding disputes, the law did not depend except on written evidence and the testimony of eyewitnesses even though there are diverse methods of evidence...the law can be changed to give the judge space for his judgment to ascertain evidence through needed methods. This is particularly needed because the disputes brought in front of *Shari`a* courts have their own distinct nature that differ from other legal or criminal cases.

Regarding the codes applied in court:

As mentioned earlier, Ottoman courts allowed for the application of various *madhahib* and gave the individual the right to take his/her case in front of the particular *madhhab* they preferred. This depended largely on the *madhhab* they adhered to or the particular case he/she was bringing to court. When the Jordanian Family Law of 1951, itself based on the Ottoman family code, was replaced in 1976, only part of the issues categorized under “Personal Status Law” were ever given codified laws. These included marriage, divorce, child custody and *nafaqa*. Important matters like guardianship (*wilaya*, *wisaya*) were left to be decided according to the Hanafi Code which was not the code applicable throughout the Ottoman Empire—Palestine was more Shafi and Maliki—but which was the official code of the Ottoman state as practiced in Anatolia. The Ottoman family code made the Hanafi code the preferred code for the Empire and after its independence, Jordan like other previous provinces of the Ottoman Empire, continued using the Hanafi code as the basis for personal status laws.

The very selection of the Hanafi code is in itself problematic because it is patriarchal in some important aspects. Here we can mention child custody and guardianship (*wilaya*), both of particular relevance to women.

This problem was recognized by women's groups in Egypt. The proposed new personal status laws submitted by women's group to the Egyptian government, are asking that all *madhahib* be used to supplement non-existing laws rather than total reliance on the Hanafi *madhhab*. There is no reason why Jordan could not do the same thing.

Part VII: OTHER LEGAL CONSTRAINTS

Women's groups I met with and whose reports I read referred to two other laws that they considered to have severe impact on women. While these laws may not appear to be immediately pertinent as constraints on women and work, in fact they are.

1. Nationality: According to the Jordan Civil Code, Section 33, "Jordanian nationality shall be governed by a special law." Section 34 defines who has this right by detailing who is included in a family. "1.The family of a person shall consist of his relatives. 2.Persons shall be deemed to be relatives if they have a common ancestor."⁴⁰ Nationality, however, is not granted according to this definition of family. Not all relatives have a right to enjoy Jordanian nationality only those with a Jordanian father. This is another contradiction in the law which effectively denies women equal rights and puts into question the fate of any property owned by women who are married to non-Jordanians. Security of nationality and property are essential for any type of economic growth.
2. Taxation Law: Tax exemptions provided by Jordanian laws benefit men and discriminate against women. Article 13 gives the husband the right to 500 dinars exemption for his wife, for each of his children and parents he supports. The wife does not have the right to claim the same exemptions even though the law considers a husband and his wife independent taxpayers. Women can claim exemptions only:
 - If the husband demanded explicitly for his wife to be granted these exemptions.
 - If the wife is the only supporter of the family (Article 4:c)

⁴⁰ The Jordan Civil Code, Trans by Hisham R. Hesham, p. 5-6.

Part VII: SUGGESTIONS

While the impediments seem clear, the method to be used to suggest solutions is difficult given the nature of the laws and patriarchal hegemony. The method I used was to (a) Explain why the existing laws are an impediment. (b) Study the origins of problematic laws from the standpoint of fiqh—i.e. discuss how different Islamic schools of law look at the question and suggest answers. (c) Study court records from before and after modern legal reforms to deconstruct existing personal status laws and understand their genesis. (d) Finally, incorporate legal opinions from prominent lawyers who are involved in the research. By including lawyers, professors, researchers and activists my hope was to open the discourse on personal status laws and changing the laws would have a better chance of success.

This list of suggestions comes directly out of the report and repeats some of the conclusions reached in each section. I am placing the suggestions according to possibilities of success and consider that all the suggestions presented here are important for ending constraints against women. The priorities here are based on what is possible rather than what needs to be accomplished. Clearly issues that can be resolved at the ministerial level are easier to resolve than those that require a change of law. Regarding the latter, issues that have to do with employment, labor, or civil laws are easier to change than personal status ones. The latter may need a more vigorous form of advocacy and greater mobilization, but change is possible.

1. Social Security and Retirement Laws: Employees pay into the system and expect equal compensation. Differences based on gender have the effect of denying equal benefits and are clearly discriminatory. Importantly for women and work, the social security and retirement laws discourage women to continue working and facilitates their leaving the work place early with full benefits rather. These laws are in the hands of the government and can be changed by executive action.
2. Social Security and Polygamy: As a way of discouraging polygamy and to make sure that widows receive a pension that would allow them a respectful life without the need for charity, husbands who take a second wife should be asked to contribute more of their salaries into the social security fund. Whether the employers are to contribute as well or the husband's would have to carry the employer's share can be discussed. But this would be fair for wives who had no say in their husband's taking a second wife. An alternative to this is for the first wife alone to be the beneficiary and except if it is she who demands divorce and depending on how long she has lived with him, her benefits are not cut off because of his repudiation/unilaterally divorcing her. A second wife could then only be covered by social security if the first wife is deceased or if the husband adds to his contribution to the social security fund. This would discourage second marriages and unilateral divorce for no fault of the wife. It would also

discourage women from marrying a man with an already existing wife because of financial gain.

3. Labor Laws: The Jordanian Constitution and labor laws declare equality of job opportunity to men and women. Jordan is also signatory to international treaties regarding gender equality in the work-place. There is no reason why the government of Jordan cannot enforce its own laws and obligations.
 - Salaries must be equalized in both the private and public sectors, and promotions have to allow women to break through the “glass ceiling” in a normal and not an exceptional or promotional way.
 - Expanded awareness of sexual harassment and what constitutes sexual harassment is a must. In conservative societies women are caught between informing on such actions and keeping out. The latter is preferred because any sort of gossip involving male/female relations in the work place invariably work against women who may be forced by their families to work to protect them or out of fear for family honor. This is an area for executive law to handle and to enforce.
 - All jobs must be regulated.
 - For there to be equality in job opportunity and pay, all jobs should be open to women. Determining what jobs women are capable of doing and the hours they could work has serious negative consequences on women and work. Not only do they deny equality in the job place, but such discrimination peripheralizes the importance of women’s contribution to production and strengthens the patriarchal approach to women as objects of social protection. Here too we are talking about executive laws that the government can take and enforce.
4. Criminal Law: Jordan has moved to cancel its laws allowing for reduced sentences for male relatives who kill their female relatives because suspicions of immorality. This is very encouraging as a first step. To put an end to honor crimes however, enforcement of Jordanian laws punishing the perpetrators of such crimes must be taken very seriously and put into immediate effect. Honor crimes will continue as long as the social structure that allows them does not change, but prevention has to begin with state action which seriously demonstrates that a perpetrator will pay for his crime. One of the interesting details regarding honor crimes in Jordan and other parts of the Islamic world is that perpetrators are increasingly younger members of the family like juvenile brothers or cousins. They may be encouraged by older members of the family to undertake the punishment of a female member of the family who is disobedient or considered to be acting dishonorably. They are also under peer pressure given the increased social/religious discourse about questions of honor. Juveniles are easily treated by the law because of their age. Jordan should set an example for other countries with the same problems by introducing special laws for honor crimes that do not base punishment on the age of the perpetrator. Accountability is seriously lacking in regards to honor crimes and therefore they continue to happen. The lack of accountability and hence lack of protection for women makes them unwilling to leave the home except for economic needs.

5. Court procedures and judges: There is no reason why women cannot receive *nafaqa* as soon as they are divorced or as soon as a court of first degree reaches a decision regarding *shiqaq and niza`*. Hardships faced by women should be recognized by the court system and given priority especially since there are children that need to be fed, housed and go to school. Furthermore, schedules are set detailing deadlines for submission, notification, and judgment. There is also a need to homogenize laws and decisions from one *Shari`a* court and *qadi* to the other. Finally, Jordan should move to place women judges in *Shari`a* Courts. They could handle child-custody cases to begin with and then move on to other areas.

6. Changing Personal Status Laws: Once marriage is put into the realm of the religious it gains a super-conservatism that is hard to budge. This report illustrated the contractual nature of marriage. This contractual nature must be emphasized and taken into consideration in court cases. Having entered into a marriage willingly, a woman like a man should have the ability to get out of marriage once it no longer works for her. There is no Qur`anic reference forbidding this nor did pre-modern courts ever force her to live with a husband against her wishes. Legal sophistry and religious justifications should therefore not be used to take away a fundamental human right from women, i.e. the right to freedom and personal happiness. It is here that the big fight lies and resistance will take place. So my suggestions take into consideration the difficulty of the process and the willingness to push reform through. Given the close connection between women's work and productivity on the one hand and the control of women by a patriarchal structure, it is almost imperative for Jordan to move on these reforms if it is to succeed in enlarging its productive capacities.
 - Knowledge: It is often said that "knowledge is power." Imagine what lack of knowledge entails. A campaign of information about women's rights, debates and discussions regarding gender issues should be introduced at every level, especially in schools and on television. More Hot-Lines should be made available and made more accessible. Women and Jordanian society needs to be informed about the options open to it such as inclusion of conditions in marriage contracts and how this can be done. Positive stories of working class women should be publicized and the health of the working place environment become better known.
 - Deconstructing laws: There should be further studies to deconstruct the existing laws in Jordan so as to understand the origins of these laws and the purpose from them. This is important if they are to be changed because as long as society sees them as religious laws it will be hard to change them. Here studying the past is important so as to see when new laws first appear and how they were executed. This effort should continue by women's groups and especially in pertinent schools.

- Safety and Protection: By implement and enforcing fair and equal work laws, the state would show its seriousness regarding the permanency of women in the work-force. A general impression is that woman's work is supplementary and even temporary until she is married or her family can afford not to have her work. Jordan's retirement laws give substance to that sort of belief. Laws therefore need to be changed, and families need to be ascertained that their daughters would not be open to abuse or sexual harassment in the work place.
 - Pressure: Advocacy is nothing new in Jordan and women leaders are very effective in this area already having achieved significant success. More need to be done. Perhaps groups of women should divide the areas of advocacy and each push for one particular law rather than clash one with the other. As history has taught us, it takes great efforts in and out of government and official corridors for any radical success to take place.
6. Age of Marriage: While there is a lot to be said to an early marriage especially in conservative societies, it is almost imperative that the age of marriage be raised from fifteen for girls and sixteen for boys. The reasons for this need have to do with modern expectations regarding education and employment. The three years between fifteen and eighteen allow a young women to finish school, receive vocational training and decided for herself if she wished to go with further education, to go into a craft or vocation, or be married. By then she would also be more mature to make her own choices in regards to marriage decisions.

Suggestions Beyond the Legal

7. Advocacy: Increased activity in this area. One suggestion would be to create a new group that would pick particular cases pertinent to women and work or other aspects of gender discrimination and litigate them in court. The idea would be for this group to do voluntary work to challenge legal interpretation. The cases would be studied, written up and publicized. This would open up a debate and would point to deficiencies in the legal system. It should also help the legal structure outline contradictions and limitations. I have spoken to various persons about this who may be interested in pursuing this possibility. They include Sae'd Karaja and Reem Abu-Hassan. Furthermore, Manal Shamut has already is already trying this process out on cases regarding *shiqaq wa niza`*. Her first effort was proving to be quite frustrating and informative proving an observation made by Ratib al-Zahir that the biggest problem with *Shari`a* Courts happens to be its judges and their inflexibility.
8. Information campaign about labor laws and personal status laws: One of the biggest problems in Jordan is the lack of knowledge regarding law. This is particularly so with labor laws and personal status laws. Greater efforts must be exerted to educate people about these laws. Lecture series, magazine articles, television exposure are all excellent and should be increased. For example, women need to be informed about the inclusion of conditions in marriage

contracts and how this can be used to insure a better future. There has to be a wide campaign for this. Most importantly, women need to be informed about their right to equal pay and legal recourse in their employer/employee relations.

9. Cultural programs (*taw'iyya*): Several types of cultural programs have already proven their success in Jordan. These include lectures given mostly on a voluntary basis through various women organizations around Amman and in outlying areas. Details of the programs run by the Business and Professional Women's Club is given below together with suggestions as to how BPWC could further its activities in this area.

I would like to see these cultural programs become more widespread at all levels. Subjects that women's groups cover are impressive and include lectures on the nature of law, how women can use the law to achieve their rights, law in everyday life, the importance of work for women, personal status laws and women's rights granted by them, areas of the law of particular benefit to women that women are not aware of, and better ways toward a harmonious marriage.

One area that is not covered yet is important to the success of micro enterprise is "owning one's business" or "working for oneself" (*a`mal hurra*). Women attending lectures with whom I had a chance to speak, did not seem to know that such a thing as microfinance existed. Therefore there is a need to make such programs better known. Other women were wary of the collateral needed which may jeopardize their sole security (e.g. inherited property). They were also wary of the heavy interest to be paid for loans that could eat away at the capital borrowed. Since Islamic society is wary of interest-taking to begin with (suspicion of usurers is part of social myths and religious stories children are brought up with) the approach should be to limit such interest-taking, find other methods of profit, or charge only actual expenses with interest at least until the project is firmly income-producing. This is an area belonging to other units of AMIR but I hope that they will take another look at my suggestion if the project is to reach the wider majority of Jordanian society. I realize that other reports have shown that interest-taking does not matter, I believe that may be because the sample used was based on those already interested or involved in the program. A look at the incredible success of Islamic banking when it was allowed could explain my meaning.

At any rate, whatever system is in place in regards to microfinance has to be made very clear and well known and assurances given through lectures and other cultural programs in newspapers, media etc. Perhaps women who are involved in these programs already or have made good use of microfinance could be included in outreach. Certainly there is a need to better educate women about owning their own businesses. From the records I have seen at the BPWC, the most pressing problem seems to be how to market products. They may need special help in that area.

10. Education: These suggestions are based on visits to classrooms, talks with teachers, reading textbooks and syllabus of primary schools.

- Government assigned textbooks provided me by AMIR illustrate the critical need for new types of textbooks if new generations are to look differently on gender relations and division of labor in the family and nation. Simply put, these books provide a strong instrument of engendering. They strengthen patriarchal hegemony perhaps without intending to. Mothers perform certain functions and fathers other functions, the former being completely dependent on the latter in anything having to do with decision making, handling public matters outside the home, political issues or decisions, and anything having to do with economics or business. The importance of textbooks in structuring culture has been recognized in the United States and other countries and it is a point of intensive interest among educators. I strongly suggest that this effort continue and a committee formed that would work continuously to ensure that discourses presented by textbooks at all level of the educational system be within frameworks emphasizing equality and respect of women and men alike. Here too the importance of work and production can become basic to the discourse without differences being made on biological or gender basis.
- It was not possible to get a wider selection of textbooks from various schools and colleges during the period I was in Jordan. I would like to take a look at a wider selection of textbooks from schools and colleges, especially assigned reading books, general biology, and literature. I would also like to see the syllabus from various schools, gender mixed or segregated, to see what subject matter girls are required and expected to study in comparison to boys. If these can be made available. I can report back to you about the various levels of discrimination given the school year.
- AMIR or another group may want to become involved in a plan to visit classrooms to see how students are taught. They may wish to meet with educators, discuss approaches and make suggestions. It is these educators who would have to implement changes and I believe they have a lot to say about the problems they face in the classroom. pointed out.
- There is a group of women university professors at the Faculty of Arts at Cairo University who have established an association called Women and Memory who are at present rewriting children's traditional stories to make them more gender equal. Though they have not looked into textbooks, they are tackling similar issues and would probably be willing to share their experience in this and other areas.

12. Gender in the Classroom and Media

The following are observations regarding the way gender is handled in the classroom in Islamic countries that may be of help in efforts to change gender culture:

1. Students in the classroom: Important questions have to do with how a teacher teaches, the questions raised in class, and what are the limits of what a particular teacher can talk about. This is important because there seems to be a looseness in subjects brought up in class whereby teachers do not stick to his/her specialty. For example a science teacher should not also be the religion teacher. Teachers should not bring gender into the class unless it is part of the syllabus and is required by the curriculum. Teachers of Arabic for instance should not talk about religious matters and confuse what is religion with what is social. For example stressing what is Islamic and what is not or saying this way of dressing is a way to heaven while another is a way to hell. The impact on the minds of young girls is dramatic. The constant reference to girls as wives and mothers and the teachers' discussion of these matters should not be central to classes and should be balanced by other types of conversation.
2. Defining classes by gender: girls are almost forced to take home ed classes. There is no stress and hardly sufficient facilities and access to computers or computer classes. Given where the world is going today, this is quite serious. Most technological facilities are provided to boys and not to girls, this means that girls are handicapped to begin with.
3. Text-books: reading material for primary and secondary education is all important because gender difference becomes a form of acculturation beginning with a very early days. There has to be an effort to assure gender equality in picture books, reading books, and any other type of reading material. Showing the male as the strong party and the female as the weaker party in a family is not only weakening to the female it also does not reflect actual reality. Reading material should show success stories for both girls and boys. But showing the boy as the hero, a *shatir hassan* and the girl as helpless and dependent on a hero while remaining docile and lovely, *sitt al-husn wal-gamal*, not only emphasizes patriarchy and male superiority, but more seriously, it creates ideal images for boys and girls about what they dream they could be or achieve, i.e. the ultimate unreachable goal. Work and independence for women are nowhere in this picture.
4. Waiting to be married: Most girls in one class Hanan al-Qinna and I surveyed declared they were "waiting to be married" when we asked them about their future goals. The question the girls were responding to in their minds was "work or marriage" even though that is not what we asked them. For this reason it is imperative that the discourse of "marriage or work" be changed. For one thing it does not reflect actual social reality, and secondly, there is no need for young girls to be confronted with such a question at an early age because that tends to make them less serious students since their interest lies elsewhere and they feel they are only temporarily outside the domestic space. The discourse that should be stressed in lectures given by activists, school-teachers, text-books, children's stories, and television programs should emphasize both home and work. Otherwise there should not be a discourse at all, after all men are not given such an alternative but

- it is expected of them that they would be productive members of the community, so why should that discourse not encompass women as well?
5. Owning One's Own Business: Investment in ones own business, opening a shop, providing a service, arts and crafts, etc. should be emphasized in all the school curriculum, lectures, television etc. Kids want to be doctors and lawyers because of the social prestige involved, the power and respect that members of professions seem to enjoy. This is certainly world-wide and part of social discourse. But traditional society did not necessarily look at things this way. Unfortunately whenever the Islamic period or traditional society is discussed in the media, schools, etc., the working class is placed at the bottom of the scale and the whole story leads up to the coming of an educated middle class with social mobility. There should be more stories about women guilds, dayyas, craftsmen, weavers, builders etc. and the power they enjoyed, the resistance they presented to rulers and the rationality of their actions. In short we need new history books that speak of the base in the context of the period and not in leftist terms in which the poor peasant and worker are downtrodden by the military forces and waiting to be rescued by someone. This is ideology and history from above. There needs to be some sort of liberation given the role and life of common people and the social power they enjoyed. Unfortunately, much of this is to be found in the archival record perhaps the only source of social history in the Middle East which is not a cultural production in the sense of being a discourse of particular persons or classes. Yet archives are closed and none but a few licensed are allowed in. Why, is curious. If the worry is the name of peoples, they can always be struck off. But there should be a great effort exerted to publish the archival record so that the history of society and social relations would be available for all. Then it would be general knowledge and not a monopoly of the few who use them selectively to create power discourses helping with particular hegemonies.
 6. Part of publishing the archival record involves the deconstruction of the law to show what is *Shari`a* and what is not. Even though the law itself admits that it was formed on the basis of *talfiq*, the result is the law applied in courts today which is regarded as *shari`a* and even though *shari`a* is in reality simply another word for "law", it is looked at as being God's word. There is definitely a need to deconstruct these laws to try and show what is law and what is God's given word, what is the *ijtihad* or rational disputations among *`ulama'*, what is part of modern law, state laws, etc. To change the laws, the actual origins of gender laws must become obvious. To do that there is a need for the minutes of the committees of *tashri`* that discussed these laws which may or may not be available to scholars to read. We need to know who was involved in formulating these laws, their background, *madhhab*, education, exposure to particular countries or the laws of particular countries, and work experience.

VIII. “Business and Professional Women’s Club”

I spent some time at the club meeting with its President, Mrs. Hind Abdel-Jabir, its Director, Mrs. Rasha Barghouti, its lawyers Ms. Hanan al-Qinna, (corporate) and Manal Shamut (*Shar`i*) and other persons responsible for the Club’s business “Incubator”, library and media. From these meetings I came out with a good idea about the capabilities of the club and the areas that make them quite important for microfinance projects. The following are the Club’s activities of pertinence to this project:

I. Legal Consultancy: The legal office of BPWC’s activities can be divided into three parts:

- a. Taw`iya: educating women about their legal rights and duties in regards to business issues and in regards to marriage and family. They do this through the presentation of seminars on particularly important issues (sometimes they are asked to form a seminar to discuss specific issues). Outreach programs are very important, going out to speak to women’s groups, schools and children to introduce them to basics of laws and instruct them on how and where they can get legal help.
- b. Legal assistance: Women with legal problems—business or personal status—are encouraged to appeal for assistance from the lawyers of BPWC. This is a unique service and provided in several forms. First, by direct discussion with one of the Club’s capable lawyers who would sit with any woman who comes seeking help and discuss her problems advising her as to what to do or where to go. If those in need of help are not wealthy and are identified by the Ministry of Social Affairs as poor, then the club adopts their case. Second, once the case is adopted it is turned over to a lawyer volunteer from the roster of the Lawyer’s niqaba who do it for free. The club coordinates this voluntary work. Third, for those women who cannot come to the club or who are afraid to identify who they are, there is a Hot Line, i.e. a telephone number that women can call and for a professional opinion. The latter is an interesting innovation. Reading the record of these calls illustrated how important the Hot Line is as an instrument that should be used more widely not only in Jordan but throughout the world where women are not mobile enough to come in person for help, or are afraid to do so. The number of calls by women who were asking for an opinion for a relative or a friend was significant, showing how reluctant women with family problems are in bringing them forward. The club performs between 1000 and 1400 such consultations per year.
- c. Advocacy: Changing laws through such routes as Majlis al-A`yan where BPWC has allies to push for greater rights for women. It seems that women have successfully, with the assistance of the leadership of BPWC, managed to change a particularly important law regarding *tawqif* (stopping and searching). By the changes in this law, women can no longer be stopped by the police and questioned on

suspicion of prostitution because they were out in the street by night. Such advocacy is very important and could be the answer to changing laws impeding women in business. I suggested another form of advocacy to the Club's lawyers that may be an avenue to challenge and change laws without having to resort to the Majlis for political action. Lawyers can take up one issue of particular significance to the rights of women (a woman's right to work without a husband's approval for instance). They would then push it in court taking up case after case and fight it on legal basis by deconstructing the laws, finding legal precedence from the very sources of law that the courts use (the *fiqh* sources). Since personal status is seen by *Shari'a* judges, lawyers will have to use the same arguments and the sources are very wide and varied. Meanwhile human right debates can be taken up by committees to the Majlis.

- II. Business Training: The club is often contacted by women asking for jobs or for help in finding jobs. That is not the purpose of the club although they do try and help. Business training is mostly in the form of an "incubator" which is a very interesting program providing women who want to enter business with a place and facilities (telephone, computer, office space) to launch their business. It is a fascinating idea and should be important for pushing women—especially university graduates—who want to go into business for themselves. I saw one woman setting up an internet service, was told of another who launched an Avon company branch, and tasted the chocolates being marketed by a third. This incubator as an idea probably needs to be advertised better and probably needs financing to help in all the steps involved. I highly recommend it for future assistance and would like to see similar projects for poorer women who cannot communicate in English and cannot use computers.

To conclude, there is no question that the BPWC has played a significant role in promoting women and business in Jordan. Their Hot-Line is one of the most impressive innovations I have seen anywhere in the Islamic world and should be strengthened and publicized so that it could reach wider sectors of the Jordanian public. The lawyers running the Hot-Line are knowledgeable, efficient and dedicated and deserve commendation. It is no exaggeration to say that without the assistance of the club, its leadership and its lawyers this report would not have been possible.

GLOSSARIES